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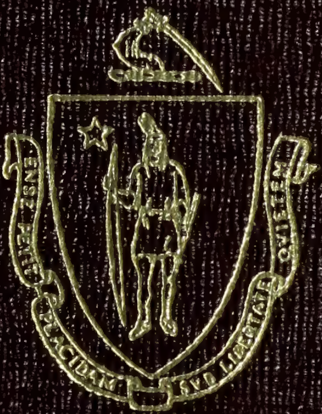
MANUAL OF THE LAWS
RELATING TO PUBLIC HEALTH



MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
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MANUAL OF LAWS

PERTAINING TO PUBLIC HEALTH

1990

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
250 Washington Street
Boston, MA 02111

This manual is prepared in accordance with the provisions of Chapter 111, Section 2[illegible] of the General Laws [illegible] the Department of [illegible] health [illegible] a manual of [illegible] laws [illegible] years. This [illegible] is [illegible] the 1990 [illegible].

MANUAL OF LAWS

PERTAINING TO PUBLIC HEALTH

1980

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
600 Washington Street
Boston, MA 02111

This Manual is prepared in accordance with the provision of Chapter 111, Sections 24, of the General Laws, which directs the Department of Public Health to publish a Manual of Health Laws every five years. This Manual is complete through the 1979 legislative session.

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MASSACHUSETTS REHABILITATION COMMISSION

§ 74. Established; composition; powers and duties

There shall be a commission on the vocational rehabilitation of handicapped persons to be known as the Massachusetts rehabilitation commission, in this section and in sections seventy-five to eighty-four, inclusive, called the commission, consisting of a commissioner of rehabilitation and an advisory council of eleven members as hereinafter described. The commission shall co-operate with the United States Department of Health, Education and Welfare or its successors in the administration of Public Law 565 (83rd Congress, 2nd Session 1954), and amendments thereto,[1] relating to the vocational rehabilitation of handicapped persons, and may expend such state, federal or other funds as are available for the vocational rehabilitation of handicapped persons.

Added by St.1956, c. 602, § 2.

[1] 29 U.S.C.A. § 31 et seq. (repealed; see, now, 29 U.S.C.A. § 720 et seq.).

§ 75. Commissioner of rehabilitation; appointment; term; salary; powers and duties

The commissioner of rehabilitation shall be appointed by the governor for a term coterminous with that of the governor. He shall receive a salary of twenty-seven thousand five hundred dollars and shall devote his full time during business hours to the duties of his office. The commissioner shall have sole charge with the advice of the advisory council of the supervision and administration of the commission and of the vocational rehabilitation of all handicapped persons, except the blind. The commissioner shall, with the approval of the governor and council, prescribe all rules and regulations relating to the vocational rehabilitation of handicapped persons. He may establish such divisions and, with the approval of the governor and council, may appoint such directors as he deems necessary, and such assistants and consultants as may from time to time be necessary to enable him to perform his duties.

Added by St.1956, c. 602, § 2. Amended by St.1963, c. 801, § 10; St.1967, c. 844, § 4; St.1969, c. 766, § 7; St.1971, c. 116, § 7; St.1972, c. 300, § 7; St.1973, c. 426, § 7; St.1974, c. 422, § 7; St.1977, c. 234, §§ 16 to 18; St. 1977, c. 701.

§ 76. Advisory council

The advisory council shall consist of the commissioner of social services, the commissioner of public welfare, the commissioner of public health, the commissioner of education, the commissioner of mental health, the commissioner of correction, the commissioner of probation, the director of employment security, the chairman of the parole board, the chairman of the industrial accident rehabilitation board, established by section twenty-four of chapter twenty-three, or their severally authorized representatives, and five persons, qualified by training, experience, or demonstrated interest in the vocational rehabilitation of handicapped persons, to be appointed by the governor, with the advice and consent of the council, as follows:—one for a term of two years; two for terms of fours years, and two for terms of six years. Upon the expiration of the term of any appointive member, his successor shall be appointed in like manner for a term of six years. Said members of the advisory council shall elect their chairman and shall meet at least once a month. They shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Added by St.1956, c. 602, § 2. Amended by St.1967, c. 738; St.1978, c. 552, § 1.

§ 77. Definitions

The following words and phrases as used in sections seventy-four to eighty-four, inclusive, shall have the following meanings:—

"Disabled person", a person who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting his activities or functioning;

"Handicapped person", a disabled person whose disability constitutes a substantial handicap to employment but which is of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a remunerative occupation;

"Vocational rehabilitation services", any goods and services necessary to render a handicapped person fit to engage in a remunerative occupation or in the occupation of home-maker, including:—

1. Diagnostic and related services, including transportation, required for the determination of eligibility for service and of the nature and scope of the services to be provided; guidance and placement services for handicapped individuals, the acquisition of small business enterprises or other equipment, and initial stocks and supplies for small business enterprises conducted by handicapped persons under the supervision of the commission;

2. Physical restoration services;

3. Books and training materials;

4. Maintenance;

5. Tools, equipment, initial stocks and supplies, including equipment, initial stocks and supplies for small business enterprises;

6. Transportation not included previously;

7. Occupational licenses; and

8. Other goods and services necessary to render a handicapped person fit to engage in a remunerative occupation, or in the occupation of home-maker;

9. Training for handicapped individuals;

10. Services to the families of a handicapped individual when such services are necessary towards the rehabilitation of such individual.

"Workshop", a place where any manufacture or handiwork is carried on, and which is operated for the purposes of providing vocational training and remunerative employment to severely handicapped persons (1) as an interim step in the vocational rehabilitation process for those who cannot be readily absorbed in the competitive labor market; or (2) during such time as employment opportunities for them in the competitive labor market do not exist;

"Rehabilitation facility", any person or instrumentality providing medical, surgical, hospital, prosthesis, physical restoration, educational and vocational rehabilitation services, or job placement services.

Added by St.1956, c. 602, § 2. Amended by St.1959, c. 328, § 1; St.1970, c. 716, § 1.

§ 78. Vocational rehabilitation services

The commission shall provide vocational rehabilitation services directly or through public or private rehabilitation facilities to any handicapped person (1) who is a resident of the state at the time of filing his application therefor and whose vocational rehabilitation the commission, after full investigation, determines can be satisfactorily fulfilled, or (2) who is eligible therefor under the terms of an agreement with any department, division, or sub-division of the commonwealth, with another state, or with the federal government; provided, however, that those vocational rehabilitation services enumerated in items 2 to 10, inclusive, in section seventy-seven shall be provided at public cost only to those handicapped persons who are found by the commission to require financial assistance with respect thereto, and to persons receiving old age and survivors insurance benefits for disability. If vocational rehabilitation services cannot be provided to all eligible handicapped persons who apply therefor, the commission shall provide by regulation the order to be followed in selecting those to whom such services will be provided.

Added by St.1956, c. 602, § 2. Amended by St.1959, c. 328, § 2; St.1967, c. 486; St.1970, c. 716, § 2.

§ 78A. Extended sheltered employment for handicapped persons

The commission shall administer a program of extended sheltered employment for those physically or mentally handicapped persons over sixteen years of age, who, after individual evaluation by the commission, are considered unemployable in the competitive labor market, but who are able to earn through their productive capacity at least one quarter of the legally established minimum wage in extended employment in a sheltered workshop operated by a private non-profit organization. The commission shall inspect the facilities for extended sheltered employment of such private non-profit organizations and shall maintain a register of such organizations which it approves as qualified to meet the needs of such handicapped persons and eligible to receive funds. The commission may contract with such organizations for the furnishing of such extended sheltered employment, and may, subject to appropriation, expend for such purpose such sum or sums, not to exceed fifteen hundred dollars a year for each such handicapped person.

Added by St.1973, c. 889.

§ 79. Commission; powers and duties

The commission shall have the following powers and duties:— (*a*) it shall continuously study the problems of vocational rehabilitation and may make investigations, demonstrations and reports thereon, and shall establish and maintain contact with such physicians and other qualified persons or instrumentalities available to render competent vocational rehabilitation services; provided, that no facility shall be considered as qualified unless it is established to provide vocational rehabilitation services for persons suffering from some specialized or general type of disablement, and unless such facility is operated under the supervision of physicians or other persons qualified to render vocational rehabilitation services, and is staffed with trained and qualified technicians; and provided, further, that no physician shall be considered qualified unless he has had experience for a reasonable term of years in a qualified facility or is qualified for a special rehabilitation procedure because he holds a certification by an appropriate American medical specialty board;

(*b*) it may enter into reciprocal agreements with other states to provide for the vocational rehabilitation of residents of said other states;

(*c*) it may establish and operate rehabilitation facilities and workshops, may make grants to public and contracts with private non-profit organizations for such purposes;

(*d*) it may supervise the operation of small business enterprises established to be conducted by handicapped persons;

(*e*) it shall maintain records of all persons who are determined by the commission to be fit and eligible for vocational rehabilitation, and the order to be followed in selecting those to whom vocational rehabilitation services will be provided;

(*f*) it shall establish and operate a program for the vocational rehabilitation of epileptics, supervised by a supervisor in education to be appointed by the commission; and

(*g*) it shall make an annual report to the general court, a copy of which shall be filed with the clerk of the house of representatives on or before the first Wednesday in December.

Added by St.1956, c. 602, § 2. Amended by St.1965, c. 854.

§ 80. Additional powers and duties of commission

In carrying out the provisions of sections seventy-four to eighty-four, inclusive, the commission shall co-operate with the Secretary of the Department of Health, Education and Welfare, and shall develop a state plan including such methods of administration as are found by the said Secretary and the commission to be necessary for the proper and efficient operation of said sections, to assure that full financial benefits of all federal laws may be available to the commonwealth and the citizens thereof.

The commission is authorized to enter into an agreement on behalf of the commonwealth with the Secretary of Health, Education and Welfare to carry out the provisions of the federal social security act relating to the making of determinations of disability under Title II of said act, and to appoint such agents or assistants as may be necessary to administer the provisions of such agreements.

Added by St.1956, c. 602, § 2.

§ 81. Cooperation with state agencies, departments, etc.; agreements

The commission shall co-operate with the divisions of industrial accidents and employment security in the department of labor; the departments of public welfare, social services, public health and mental health, and such other departments, divisions or subdivisions of the commonwealth as are charged or concerned with the rehabilitation of disabled persons. Where practicable, the commission shall enter into agreements, confirmed in writing, setting forth procedures whereby said disabled persons are located and listed to have their fitness and eligibility for vocational rehabilitation determined by the commission, and the methods of and responsibility for financial aid during vocational rehabilitation are decided upon in accordance with the laws of the United States and of the commonwealth governing said departments, divisions and subdivisions. The commission shall further enter into agreement with the bureau of public employment offices in the division of employment security in the department of labor, under which handicapped persons receiving vocational rehabilitation may be referred for pre-placement interview or for job placement to the public employment offices established in said division by section nine M of chapter twenty-three; provided, that nothing in said agreement shall prevent reference of said handicapped persons to employment through the commission.

Added by St.1956, c. 602, § 2. Amended by St.1978, c. 552, § 2.

§ 82. Federal funds; custodian; expenditure

The state treasurer shall be custodian of funds allotted to the commonwealth from appropriations made under the acts of congress mentioned in sections seventy-four and eighty. The funds so allotted shall be expended, without specific appropriation, under the order or the approval of the Massachusetts rehabilitation commission.

Added by St.1956, c. 602, § 2.

§ 83. Gifts to commission; acceptance; investment

The commission is hereby authorized and empowered to accept and use gifts made unconditionally by will or otherwise for carrying out the provisions of sections seventy-four to eighty-four, inclusive. Gifts made under such conditions as in the judgment of the commission are proper and consistent with said provisions may be so accepted and shall be held, invested, reinvested, and the principal and interest thereof may be used in accordance with the conditions of the gift and may be expended under the order or the approval of the commission without specific appropriation.

Added by St.1956, c. 602, § 2.

§ 84. Information or records confidential; penalty for disclosure

Information or records concerning any applicant for vocational rehabilitation shall be confidential and for the exclusive use and information of the commission in the discharge of its duties. Such information or records shall not be open to the public, notwithstanding the provisions of section ten of chapter sixty-six or other provisions of law, and shall not be admissible in any action or proceeding unless the commission is party to such action or proceeding; provided, however that said applicant, or, with his written authority, his attorney, shall be supplied by the commission with information concerning his own record which is necessary to him in his relations with the commission; and provided, further, that the commission may, in accordance with rules and regulations, on request provide such information to any person or department, division or sub-division of the commonwealth directly concerned in the vocational rehabilitation of said applicant or to a party to an agreement established under the provisions of section eighty-one; and provided, further, that nothing herein shall be construed to prevent the commission from publishing such information in statistical form without disclosing the identity of the applicant involved.

Whoever, except with the authority of the commissioner or pursuant to his rules and regulations, or as otherwise required or authorized by law, shall disclose such information shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1956, c. 602, § 2.

§ 84A. Definitions applicable to sections eighty-four B to eighty-four H

The following words as used in sections eighty-four B to eighty-four H, inclusive, shall, unless the context otherwise requires, have the following meanings:—

"Deaf", any person of any age who cannot hear and understand speech through the ear alone.

"Office", the office of deafness.

"Director", director of the office of deafness.

"Secretary", secretary of an executive office.

"Services to deaf persons", public or privately funded programs which provide developmental, educational, financial, preventive, protective, placement, recreational, rehabilitative, social or advocate services for deaf persons; diagnostic, preventive and remedial medical services to deaf persons; information and referral services; and legal services to insure the rights of deaf persons.

Added by St.1974, c. 805, § 1.

§ 84B. Office of deafness; creation; director; appointment

There shall be in the Massachusetts rehabilitation commission but not subject to its jurisdiction an office of deafness under the exclusive supervision and control of a director who shall be appointed by the secretary of human services, with the advice of the statewide advisory council to the office, established by section eighty-four H, and who shall serve at the pleasure of the secretary of human services. The director shall, at the time of his appointment, have at least three years' professional or administrative experience in a field concerned with the needs of deaf persons. Said director may be either a deaf person or one with normal hearing, but shall have ability to use sign language and finger-spelling. He shall receive such salary as the secretary of human services may determine and shall devote his full time during business hours to the duties of the office.

Added by St.1974, c. 805, § 1.

§ 84C. Assistant directors; staff personnel; appointment; tenure

The director, subject to the approval of the secretary of human services, shall appoint and may remove such assistant directors and such other employees, consultants and interpreters as he shall deem necessary to perform the functions of the office. The provisions of chapter thirty-one and section nine A of chapter thirty shall not apply to the director or to such assistant directors, consultants and interpreters as he may appoint. In making such appointments, the director shall make every reasonable effort to insure that at least one person appointed is a deaf person.

Added by St.1974, c. 805, § 1.

§ 84D. Acceptance of funds; agreements; standards and procedures

Subject to the approval of the secretary of human services, the director may apply for and accept on behalf of the commonwealth any federal, local or private grants of money or property, whether real or personal, from any source, whether public or private, bequests, gifts or contributions to aid in the financing of any of the programs or policies of the office. Such funds shall be received by the state treasurer on behalf of the commonwealth and deposited in a separate account and shall be expended under the direction of the director, with the approval of the secretary of human services. Federal funds paid as reimbursement to the commonwealth shall be deposited in the General Fund.

The office may make agreements with other departments and agencies of the commonwealth and may contract with other individuals, organizations, corporations, associations or other legal entities including private agencies, or any departments or agencies of the federal government or the commonwealth or any political subdivisions thereof, to carry out any of the functions and purposes of the office. The director shall establish standards and procedures governing such agreements and contracts subject to the approval of the secretary of human services.

Added by St.1974, c. 805, § 1.

§ 84E. Functions of office

The office shall serve as the principal agency of the commonwealth to advocate public policies, regulations, and programs which shall improve the quality and coordination of existing services for the deaf and promote the development of new services when necessary. In the performance of this function, the office may:

(*a*) initiate and carry out studies to determine the extent, availability and priorities of need for services to deaf persons within the commonwealth, make recommendations to the secretaries and the governor on priorities of need and provide and act as a clearinghouse for information, data, and other materials relative to deaf persons;

(*b*) analyze and review all budget requests for services to deaf persons from departments or agencies within all executive offices and make recommendations to the secretaries and the governor regarding such budget requests;

(*c*) evaluate and monitor programs for services to deaf persons in departments or agencies within all executive offices and make recommendations to the secretaries and governor regarding changes necessary to improve the quality of such programs.

Added by St.1974, c. 805, § 1.

§ 84F. Information required by office; inter-agency requests

Such information as the director may deem necessary in order to assist in the discharge of his duties shall be made available to him, upon request, by any department, division, board, bureau, commission or agency of the commonwealth. All executive offices shall, upon request and within a reasonable time, provide to the office the information it requires to perform its functions as set forth in section eighty-four E.

Added by St.1974, c. 805, § 1.

§ 84G. Annual report of office

The office shall prepare an annual report which shall be a public document. Such report shall include, but not be limited to, a review of the status of services to deaf persons within the commonwealth, recommendations for priorities for the development and coordination of services to deaf persons, an assessment and evaluation of the progress made as the result of any such recommendations made in the preceding annual report, a statement of goals for activities of the office during the next following fiscal year, and the steps to be taken by the office to implement the functions stated in section eighty-four E.

Added by St.1974, c. 805, § 1.

§ 84H. Statewide advisory council to office

There shall be a statewide advisory council to the office to consist of the secretaries of the executive offices of human services, communities and development, educational affairs, manpower affairs, and elder affairs, or their designees. In addition, twelve members shall be appointed by the governor, nine of whom shall be deaf persons selected from a list submitted by one or more organizations serving the deaf. The three remaining members appointed by the governor shall be two parents selected from a list submitted by one or more organizations of parents of deaf persons, and the other shall be a licensed physician specializing in otolaryngology. All appointive members shall serve for terms of three years. The chairman shall be appointed by the secretary of human services from the appointed members and shall serve as chairman at the pleasure of the secretary, provided that no member shall serve as chairman for more than three consecutive years. Appointive members shall serve without compensation but shall be reimbursed for expenses actually incurred in the performance of their duties.

Said advisory council shall:—

(*a*) assist the director in coordinating the efforts of all public and private agencies concerned with services to deaf persons;

(*b*) advise the director on policy, planning and priorities of need in the commonwealth for services to deaf persons;

(*c*) annually review the programs, budgets and policies of the office. The office shall provide staff assistance to the council.

Added by St.1974, c. 805, § 1.

MASSACHUSETTS COMMISSION ON ATOMIC ENERGY

§ 85. Definitions

As used in sections 86 to 92, inclusive, the following words shall have the following meaning unless the context indicates otherwise:—

"Atomic energy", all forms of energy released in the course of nuclear fission or nuclear transformation.

"By-product material", any radio-active material, except special nuclear materials, yielded in or made radio-active by exposure to the radiation incident to the process of producing or utilizing special nuclear materials.

"Operator", any individual who manipulates the controls of a utilization or production facility.

"Production facility", (*a*) any equipment or device capable of the production of special nuclear material in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (*b*) any important component part especially designed for such equipment or device.

"Special nuclear material", (*a*) plutonium and uranium enriched in the isotope 233 or in the isotope 235, and any other material which the governor declares by order to be special nuclear material after the United States Atomic Energy Commission has determined the material to be such; or (*b*) any material artificially enriched by any of the foregoing.

"Utilization facility", (*a*) any equipment or device, except an atomic weapon, capable of making use of special nuclear materials in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public, or peculiarly adapted for making use of atomic energy in such quantity as to be of significance to the common defense and security, or in such manner as to affect the health and safety of the public; or (*b*) any important component part especially designed for such equipment or device.

Added by St.1956, c. 645, § 2.

§ 88. Commission; duties; reports; meetings

Said commission shall keep itself fully and currently informed on the development of atomic energy as it may affect the welfare of the commonwealth, shall consult and advise with the co-ordinator of atomic development, and the governor and council, and shall render an annual report on the progress of atomic energy development in the commonwealth for the information and guidance of the general court and the public. The commission shall, at the call of the chairman, meet within the commonwealth not less often than four times annually but may meet at such other times and at such places, within or without the commonwealth as the chairman deems necessary.

Added by St.1956, c. 645, § 2.

§ 91. Need for changes in laws, etc.; certain departments to initiate studies

The following departments and agencies are directed to initiate and to pursue continuing studies as to the need, if any, for changes in the laws and regulations administered by them that would arise from the presence within the commonwealth of special nuclear materials and by-product materials, and from the operation herein of production or utilization facilities, and, on the basis of such studies, to make such recommendations for the enactment of laws or amendments to law administered by it, and such proposals for amendments to the regulations issued by it, as may appear necessary and appropriate:

1. The department of public health, particularly as to hazards, if any, to the public health and safety.

2. The department of labor and industries, particularly as to hazardous working conditions, if any.

3. The department of industrial accidents, particularly as to the time and character of proof of claims of injuries and the extent of the compensation allowable therefor.

4. The department of public works, particularly as to the transportation of special nuclear materials and by-product materials on highways of the commonwealth.

5. The department of public utilities, particularly as to the transportation of special nuclear materials and by-product materials by common carriers not in interstate commerce and as to the participation by public utilities subject to its jurisdiction in projects looking to the development of production or utilization facilities for industrial or commercial use.

6. The division of insurance, particularly as to the insurance of persons and property from hazards to life and property resulting from atomic development.

7. The department of environmental management, particularly as to the hazards, if any, to the natural resources of the commonwealth, including wild life.

8. Such other departments and agencies including departments and agencies of political subdivisions of the commonwealth as the governor may direct and for the purposes specified by him.

Added by St.1956, c. 645, § 2. Amended by St.1975, c. 706, § 5.

§ 92. Special nuclear material, etc.; manufacture, etc., regulated

No person shall manufacture, construct, produce, transfer, acquire or possess any special nuclear material, by-product material, production facility, or utilization facility, or act as an operator of a production or utilization facility within this commonwealth unless he shall have first obtained a license or permit for the activity in which he proposes to engage from the United States Atomic Energy Commission if, pursuant to the Atomic Energy Act of 1954,[1] the Commission requires a license or permit to be obtained by persons proposing to engage in activities of the same type over which it has jurisdiction.

Added by St.1956, c. 645, § 2.

[1] 42 U.S.C.A. § 2011 et seq.

§ 93. Injunction against violations

Whenever, in the opinion of the attorney general, any person is violating or is about to violate section ninety-two, the attorney general may apply to the appropriate court for an order enjoining such person from engaging or continuing to engage in the activity violative of said section, and upon a showing that such person has engaged, or is about to engage, in any such activity, a permanent or temporary injunction, restraining order or other order may be granted.

Added by St.1956, c. 645, § 2.

MOBILE HOMES COMMISSION

§ 108. Establishment; membership; duties; compensation and expenses

There shall be a mobile homes commission, hereinafter called the commission, consisting of five members, not more than three of whom shall be members of the same political party, to be appointed by the governor, with the advice and consent of the council, of whom one shall reside in a mobile home. Said commission shall carry on a continuous study of mobile homes and the problems of mobile home residents. Said commission shall report annually to the general court its activities and its recommendations, with accompanying legislation. The members of said commission shall be appointed initially for terms of one, two, three, four and five years respectively, as the governor may designate. Upon the expiration of the term of a member his successor shall be appointed by the governor, with like advice and consent, for a term of five years. The members of the commission shall receive no compensation for their services, but shall be reimbursed for necessary traveling expenses incurred in the performance of their duties.

Added by St.1962, c. 487, § 2.

HEALTH AND WELFARE COMMISSION

§ 125. Establishment; members; chairman and vice-chairman; executive secretary and assistants; powers and duties of commission

There shall be a health and welfare commission, in this section and in sections one hundred and twenty-six, to one hundred and twenty-nine, inclusive called the commission, consisting of the commissioner of public health, the commissioner of mental health, the commissioner of public welfare, the commissioner of rehabilitation, and three members to be appointed by the governor, not more than two of whom shall be members of the same political party, and one of whom shall represent the Massachusetts Psychological Association. Said commission shall plan, co-ordinate and develop comprehensive programs in health and welfare services and facilities. Upon the expiration of the term of office of an appointive member, his successor shall be appointed in like manner for a term of three years, and shall serve until the qualification of his successor. Each appointive member of the commission shall receive the sum of fifty dollars for each day or part thereof of service as a commissioner; provided, that no such member shall receive in any fiscal year a sum in excess of five thousand dollars for his services.

The chairman and vice chairman of the commission shall be elected biennially by the members; provided, however, that no member may serve as chairman for two consecutive terms. The vice chairman shall assist the chairman and serve as chairman in his absence. The commission shall meet monthly, and at other times at the call of the chairman or as the commission may determine.

The commission may appoint an executive secretary, research assistants, and legal, clerical, and other assistance as may be necessary to carry out its duties. The executive secretary shall not be subject to chapter thirty-one nor to section nine A of chapter thirty, and shall be paid such compensation as the commission shall from time to time fix.

Funds received by the commission from the federal government, or from any foundation, corporation or other person shall be deposited with the state treasurer and be accounted for and audited in the usual manner prescribed for all agencies of the commonwealth. The commission shall not interfere with the administrative or policy making decisions of the departments of mental health, public health, or public welfare or of the rehabilitation commission.

Added by St.1966, c. 353, § 2. Amended by St.1967, c. 29, § 1.

§ 126. Review and recommendation of new programs; pilot studies, research and demonstration programs; co-ordination; co-operation with departments and agencies

The commission shall review, and make recommendations for all new programs that provide for co-ordinating the services of the departments of public health, mental health, and public welfare, and of the rehabilitation commission. The commission shall, wherever feasible, recommend combined staff services for said departments and said commission in such areas as central accounting and fiscal operation, personnel services, legal, training, information, educational and statistical services, research for long-range planning and development, and joint studies.

The commission may serve as the communicative mechanism for the development and submission of plans to the various agencies of the federal government by state and local health and welfare agencies, and may serve in an advisory capacity for the receipt and disbursement of funds to medical schools, hospitals, laboratories, and other agencies participating in the planning, operation, and development of regional medical programs, hospitals, health centers and other facilities under any federal law providing such funds.

The commission may recommend the conduct of pilot studies, research and demonstration programs in co-ordinated health and welfare programming, and may receive and disburse funds to these ends. The commission may contract with the Massachusetts Health Research Institute, Inc., The Medical Foundation, Inc., the Massachusetts Committee on Children and Youth, and other qualified organizations, associations, corporations, or individuals to carry on approved research studies and to submit reports recommending ways and means of co-ordinating, consolidating or in other ways improving health and welfare facilities in the commonwealth.

The commission shall maintain full co-operation with all departments, divisions, agencies and boards of the commonwealth, all of its political subdivisions, all hospitals, universities, and other agencies whose functions are encompassed by the objectives of the commission, and shall receive from them, and render to them, all possible assistance.

Added by St.1966, c. 353, § 2.

§ 127. Advisory committee; establishment; membership; meetings

The commission may establish an advisory committee of thirty unpaid members, to be appointed by the chairman for a term of four years, of whom one shall represent the medical schools, one the Massachusetts Medical Society, one the dental schools, one the Massachusetts Dental Society, one The Massachusetts Public Health Association, one the Massachusetts Hospital Association, one the Massachusetts Hospital Service, Inc., one the department of corrections, one the youth service board, one the division of employment security, one the department of education, one the department of elder affairs, one the Massachusetts Mental Health Association, one representative of a community chest organization or community health and welfare council serving an area containing two hundred thousand or more residents, one the Massachusetts Heart Association, one the Massachusetts Cancer Society, one the consumers' council, one The Massachusetts Health Council, Inc., one the Massachusetts Medical Service, one the Massachusetts Chapter of the National Association of Social Workers, one the Massachusetts Chapter of the National Rehabilitation Association, one the Massachusetts Committee on Children and Youth, one the drug addiction rehabilitation board, one the Massachusetts State Labor Council, AFL–CIO, one the Associated Industries of Massachusetts, one The Massachusetts Selectman's Association, Inc., one The Massachusetts Mayors Association, Inc., one the Massachusetts League of Women Voters and one the Public Welfare Administrators Association of Massachusetts.

Said advisory committee shall meet at least once a year to receive an annual report from the commission. Other meetings of the advisory committee may be called at the discretion of the commission, for the purpose of discussing proposed plans and programs for co-ordinating health and welfare services of the commonwealth.

Added by St.1966, c. 353, § 2. Amended by St.1967, c. 55, § 1; St.1973, c. 1168, § 5.

§ 128. Regional offices; service regions; regional advisory committees; establishment; reports of commission

The commission may establish regional offices equipped to offer the public complete information or services which are the responsibility of any of said three departments of mental health, public health, public welfare and the rehabilitation commission.

The commission shall give high priority to establishing service regions, and to offering comprehensive service to the citizens, thereby preventing unnecessary traveling from office to office seeking information, advice, or assistance from each of said departments and said commission.

The commission may also organize regional advisory committees of not more than thirty persons to be appointed by the chairman to aid in planning for, locating or operating the combined regional health and welfare service facility. Membership on the regional advisory committee shall be from the same categories of persons listed in section one hundred and twenty-seven.

The commission shall report annually to the general court.

Added by St.1966, c. 353, § 2.

MASSACHUSETTS COMMISSION FOR THE BLIND

§ 129. Establishment; composition; cooperation with federal department; commissioner; advisory board

There shall be a commission for the blind, to be known as the Massachusetts commission for the blind, in this section and in sections one hundred and thirty to one hundred and fifty, inclusive, called the commission, consisting of a commissioner of the blind and an advisory board of five members as hereinafter described. The commission shall cooperate with the United States Department of Health, Education and Welfare or its successors in the administration of the Vocational Rehabilitation Act, as amended,[1] and with Library of Congress relative to the administration of the program of talking books for the blind and may expend such state, federal or other funds as are available for the aforementioned purposes.

The commissioner for the blind shall be appointed by the governor for a term of five years and until his successor is duly appointed and qualified. He shall receive a salary of twenty-seven thousand five hundred dollars and shall devote his entire time to the duties of his office.

The advisory board shall consist of five persons, qualified by training, experience, or demonstrated interest in the amelioration of the condition of the blind, to be appointed by the governor for a period of five years. Upon expiration of the term of any member, his successor shall be appointed in like manner for a term of five years. Said members of the advisory board shall elect their chairman and shall meet at least once a month. They shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties. If any member is absent from three regularly scheduled monthly meetings in any one calendar year, his office as a member of said board shall be deemed vacant. The chairman of the board shall forthwith notify the governor that such vacancy exists.

Added by St.1966, c. 535, § 2. Amended by St.1969, c. 766, § 8; St.1971, c. 116, § 8; St.1972, c. 300, § 8; St.1973, c. 426, § 8; St.1973, c. 1210, § 1; St.1974, c. 422, § 9; St.1977, c. 234, §§ 22 to 24; St.1977, c. 872, §§ 16 to 18; St.1977, c. 997, § 1.

[1] See 29 U.S.C.A. § 701 et seq.

§ 130. Commissioner's duties and powers; supervisors; divisions and directors; monetary and other assistance; funeral expenses

The commissioner shall be the executive and administrative head of the commission. The commissioner shall have charge of the administration and enforcement of all laws which it is the duty of the commission to administer and enforce. The commissioner may appoint and remove supervisors. The compensation of such supervisors shall be determined by the personnel administrator in the division of personnel administration. The commissioner, subject to appropriation, may also appoint and remove such other agents, teachers and clerks as may be necessary but no person employed or appointed by him shall be a member of the advisory board.

The commissioner may establish divisions and appoint directors as he deems necessary and such assistants and consultants as may from time to time be necessary to enable him to perform his duties. The commissioner may ameliorate the condition of the blind by devising means to facilitate the circulation of books, by promoting visits among the aged or helpless blind in their homes, by aiding individual blind persons in accordance with sections one hundred and thirty-one to one hundred and thirty-one E, inclusive, or by other means as he may deem expedient. In furnishing aid to each claimant for aid to the blind, the commissioner shall disregard the first eighty-five dollars of earned income plus one half of earned income in excess of the said eighty-five dollars of each claimant.

The commission may, if no other means are available, pay for the expense of the funeral and burial of blind persons aided under this section, a sum not exceeding three hundred dollars; provided, that the total expense of the funeral and burial does not exceed nine hundred dollars; and provided, further, that any payment made by said commission shall be reduced by whatever resources may exist in the estate of such deceased blind person. Payment under this section may be made directly to the person furnishing such service.

Added by St.1966, c. 535, § 2. Amended by St.1971, c. 698, § 3; St.1971, c. 775; St.1973, c. 1210, §§ 2 to 4; St.1976, c. 243, § 1.

§ 131. Financial assistance program; state payments supplementary to federal benefits; eligibility, restriction; standard levels

The commission shall administer a program of financial assistance for blind persons who reside within the commonwealth. Such assistance, which shall be called state supplementary payments, shall be based on need and granted in supplementation of benefits granted by the federal government to blind individuals, under the provisions of title XVI of the federal Social Security Act and amendments thereto.[1] Such assistance shall be granted to persons who, on account of blindness, qualify for supplemental security income granted pursuant to said title XVI and may, based on need, be granted to individuals who would, but for their income, be eligible for such supplemental security income.

No assistance under this section shall be granted to an applicant who, at any time within two years immediately prior to the filing of an application for such assistance, has made an assignment or transfer or who has mortgaged or otherwise encumbered property so as to render himself eligible for such assistance.

The commissioner shall establish, subject to the approval of the secretary of the executive office of human services, standard levels for state supplementary payments for the blind. Such payments may vary by marital status and by living arrangements to the extent allowed by said title XVI and the regulations promulgated thereunder.

Added by St.1973, c. 1210, § 5.

[1] 42 U.S.C.A. § 1381 et seq.

§ 133. Vending stands in public buildings; authority to operate

The officer, board or other authority in charge of any building or property of the commonwealth, or any county, city or town thereof, shall grant to a blind person, duly licensed therefor by the commission for the blind, authority to operate in such building or on such property a stand for the vending of newspapers, periodicals, confections, tobacco products and such other articles as such officer, board or other authority approves, wherever a vending stand may be properly and satisfactorily operated by a blind person.

Added by St.1966, c. 535, § 2.

§ 135. Register of the blind; identification card

The commissioner of the blind shall maintain a register of the blind in the commonwealth which shall describe therein the condition, cause of blindness and capacity for education and industrial training. Said register shall be maintained on a current basis so as to give information which will aid in planning improved facilities and services to the blind and restoration and conservation of sight. Any identification card issued by said commissioner providing that a blind person may receive free transportation shall not contain any statement requiring that the blind person shall be accompanied by a guide.

Added by St.1966, c. 535, § 2. Amended by St.1973, c. 1210, § 6; St.1976, c. 144, § 1.

§ 136. Reports of medical authorities establishing blindness

Whenever, upon examination at a clinic, hospital or other institution, or elsewhere, by a physician or optometrist, the visual acuity of any person is found to be with correction 20/200 or less in the better eye, or the peripheral field of his vision to have contracted to the ten degrees radius or less regardless of visual acuity, the superintendent of such institution, or the physician, optometrist or other person who conducted or was in charge of the examination if it took place elsewhere than in such an institution, shall within thirty days report to the commissioner the result of the examination and that blindness of the person has been established.

Added by St.1966, c. 535, § 2.

§ 143. Schools and workshops

The commissioner shall, with the approval of the governor, establish, equip and maintain schools for the industrial training of blind persons and workshops for their training and employment. He may pay suitable wages to the employees of such schools and workshops and may devise means for the sale and distribution of products of such schools and workshops.

Added by St.1966, c. 535, § 2.

§ 145. Study of problems relating to blindness; investigations; contact with physicians and other qualified facilities

(*a*) The commission shall continuously study the problems relating to blindness and make investigations, demonstrations and reports thereon, and shall establish and maintain contact with such physicians and other qualified persons or facilities available to render competent services to the blind; provided, that no facility shall be considered as qualified unless it is established to provide services for the blind and unless such facility is operated under the supervision of physicians or other persons qualified to render services to the blind and is staffed with trained and qualified assistants.

(*b*) The commission may establish and operate rehabilitation facilities and workshops for the blind, and make grants to public and contracts with private nonprofit organizations for such purposes.

(*c*) The commission may supervise the operation of small business enterprises established to provide employment for blind persons.

(*d*) The commission shall make an annual report.

Added by St.1966, c. 535, § 2.

ADVISORY COUNCIL ON HOME AND FAMILY

§ 151. Establishment; composition; appointments; chairman; qualifications of members

There shall be an advisory council on home and family, hereinafter in this section and in sections one hundred and fifty-two and one hundred and fifty-three called the council, consisting of nine members, seven of whom shall be appointed by the governor for terms concurrent with that of the governor, together with the commissioner of mental health, or his designee, and the commissioner of public health, or his designee. The governor shall designate one of his appointees to act as chairman of the council. Each appointive member shall be a resident of the commonwealth. The council members to be appointed by the governor shall consist of two practicing attorneys, two clergymen, one family sociologist, a family care worker, and a trained sociologist or a college instructor of sociology, with the rank of not less than assistant professor.

Added by St.1966, c. 624, § 2.

§ 152. Duties of council

The council shall conduct studies, investigation and research into (1) the scope and operation of the laws of the commonwealth and other states relating to marriage, actions affecting marriages, support of children and other dependents and the effect of court decisions thereon,

(2) the causes of family disintegration and the need for future publicly and privately sponsored programs which will promote and encourage stable family situations, and

(3) the impact of family disintegration on such factors as the cost of welfare programs, the incidence of juvenile delinquency and the rate of crime in the commonwealth.

The council shall make an annual report, as provided in chapter thirty.

The council may make available to the general public and interested persons pertinent information in the field of family life.

Added by St.1966, c. 624, § 2.

§ 153. Acceptance, deposit and expenditure of funds; reports; audit of expenditures

Subject to the approval of the commissioner of administration, the council may apply for and accept on behalf of the commonwealth any funds or monies from any source including grants, bequests, gifts, contributions, compensation, or other payments made by the federal government and any agencies or subdivisions thereof or by any individual, corporation, association, or public authority. Said funds shall be deposited in a separate account with and received by the state treasurer on behalf of the commonwealth. All such funds may be expended without specific appropriation under terms and conditions provided in rules and regulations established by the commissioner of administration provided such expenditures are otherwise in accordance with law.

The council shall report in full all federal subventions and grants to the budget director and to the comptroller, and such reports shall include such itemization as may be required by federal regulation. All expenditures of funds or monies received by federal subvention or grant shall be subject to the audit of the state auditor.

Added by St.1966, c. 624, § 2.

HEALTH FACILITIES APPEALS BOARD

§ 166. Establishment; function; members; appointment; qualifications; compensation; personnel

There shall be within the executive office of human services a health facilities appeals board, hereinafter called the board, which shall make determinations on appeals filed pursuant to section twenty-five E of chapter one hundred and eleven. The board shall consist of five persons to be appointed for terms of three years by the governor, at least three of whom shall be consumers of health care services who are not officers or employees of, and do not bear any fiduciary relationship to a person or institution providing health care services. One such consumer member shall be a member of the bar of the commonwealth and shall be designated by the governor to serve as chairman of the board. Persons appointed to the board shall be knowledgeable in matters pertaining to the delivery of health care services; and the governor, in making said appointments, shall consider any persons recommended to him for such purpose by the comprehensive health planning agencies established pursuant to sections three hundred and fourteen (*a*) and three hundred and fourteen (*b*) of the Federal Public Health Service Act.[1]

Each member of the board shall be paid fifty dollars for each day spent in the performance of his duty, not to exceed six thousand dollars in any fiscal year, and shall be reimbursed for expenses actually and necessarily incurred in the discharge of his duties.

The board, subject to appropriation, may employ such persons, none of whom shall be subject to the provisions of chapter thirty-one or section nine A of chapter thirty, as may be required to discharge its responsibilities. Such persons may include, without limitation, hearing officers and persons experienced in serving as masters and auditors in the supreme judicial and superior courts.

Added by St.1972, c. 776, § 1.

[1] 42 U.S.C.A. § 246(a), (b).

COMMISSION ON SUPPLEMENTAL SECURITY INCOME

§ 166A. Establishment; members; function

There shall be within the executive office of human services a commission on supplemental security income, hereinafter called the commission, consisting of the commissioner of public welfare or his designee, who shall serve as chairman, the commissioner of the blind or his designee, the secretary of the executive office of human services or his designee, the secretary of the executive office of elder affairs or his designee, the secretary of the executive office for administration and finance or his designee, the commissioner of veterans' services, three representatives to be appointed by the speaker of the house, two senators to be appointed by the president of the senate, and six recipients of payments under chapter one hundred and eighteen A or section one hundred and thirty-one of chapter six, to be appointed by the governor. The commission shall review, monitor and evaluate generally the effects of the supplemental security income program, and specifically the effects of section two of chapter one hundred and eighteen A and of section one hundred and thirty-one A.

Added by St.1973, c. 1210, § 9.

NUTRITION BOARD

§ 181. Establishment; members; secretary and executive secretary; staff; appointment

There shall be in the executive office of human services a nutrition board, hereinafter referred to as the board, which shall consist of the commissioner of public health, who shall serve as chairman, the commissioner of public welfare, the director of the office for children, the commissioner of mental health, the commissioner of education, the commissioner of food and agriculture, the secretary of human services, the secretary or consumer affairs, the secretary of elder affairs, or their respective designees, and nine persons to be appointed for terms of three years by the governor, of whom one shall be a registered physician with expertise in nutritional science, one shall be a qualified practicing nutritionist or dietitian with experience and knowledge in public and community nutrition, one shall be a representative of the food industry, one shall be a nutrition educator from an institution of higher education concerned with graduate education in the field of nutrition, and five shall be representatives of the general public who shall be consumers selected in a manner so as to reflect the population distribution of the commonwealth. Appointive members of the board shall not be compensated for their services, but shall be reimbursed for any expense actually and necessarily incurred in the performance of their duties.

The chairman shall, with the approval of the board, appoint a secretary and an executive secretary who shall not be subject to the provisions of chapter thirty-one and section nine A of chapter thirty, but who shall be recognized authorities in the field of public health nutrition and nutritional science and who shall have broad experience in public health nutrition. The secretary and executive secretary shall receive such salary as the board, with the approval of the governor, may fix. The chairman shall, with the approval of the board, expend such sums for clerical, technical and other assistance as may be required by the board in carrying out its duties. The board shall be provided with adequate quarters in the state house or elsewhere.

Added by St.1974, c. 833, § 2. Amended by St.1975, c. 706, § 7.

§ 182. Advisory function, and duties

The nutrition board shall act in an advisory capacity to the secretaries and commissioners having membership on the board as provided in section one hundred and eighty-one and shall:

(*i*) plan long-range nutrition programs for the commonwealth according to need;

(*ii*) inform the commissioners serving on the board, and other state employees when necessary, as to the goals set forth by the White House Conference on Food and Nutrition;

(*iii*) review and evaluate existing food and nutritionally related programs, including school lunch and other meal programs, food assistance programs, such as the food commodity distribution program and the food stamp program, budget allocations for dietary needs under the categorical financial assistance programs, nutrition programs for the elderly, and any other such programs;

(*iv*) survey the nutritional health of the citizens of the commonwealth, particularly that of low-income persons and other high risk groups;

(*v*) assist in planning the development of nutrition programs and projects in private and public institutions and the various bureaus, departments and offices of the commonwealth and its political subdivisions;

(*vi*) review the annual plans and the proposed budgets of the various state departments insofar as said plans and budget relate to or have an effect on any nutrition or nutritionally related matters or programs, the eating habits of the citizens of the commonwealth or the nutritional health of the citizens of the commonwealth and make recommendations to the commissioners of the various departments in relation thereto;

(*vii*) devise a plan whereby the benefits of various governmental and nongovernmental funding opportunities can be secured for the citizens of the commonwealth;

(*viii*) submit an annual report to the governor, the commissioners of departments of the commonwealth and the general court, which report may include recommendations for legislation regarding nutritional and food service problems and programs in the commonwealth.

Added by St.1974, c. 833, § 2.

COMMITTEE ON MEDICOLEGAL INVESTIGATION

§ 184. Medicolegal investigation committee

There shall be a committee on medicolegal investigation, hereinafter called the committee, to consist of the attorney general, the commissioner of public safety, the commissioner of public health, the dean of the medical school of the University of Massachusetts, or their designees, and ten persons to be appointed by the governor, one of whom shall be a representative of the Massachusetts Medico-Legal Society, one of whom shall be a representative of the Massachusetts Society of Pathologists, one of whom shall be a physician licensed to practice medicine in the commonwealth, one of whom shall be an attorney licensed to practice law in the commonwealth, one of whom shall be a professor of law licensed to practice law in the commonwealth, one of whom shall be a funeral director licensed in the commonwealth, one of whom shall be a district attorney in the commonwealth, one of whom shall be chief of police of a city or town in the commonwealth, and two representatives of the general public. Each appointed member of the committee shall serve for a term of three years, or until his successor is appointed and qualified, whichever is longer; provided, however, that no appointee shall serve more than two consecutive terms. The members shall serve without compensation, but shall be reimbursed for travel and other expenses actually and necessarily incurred in the discharge of their duties. Said committee shall meet at least twice each year. The governor shall appoint a chairman and said committee shall elect a vice chairman annually. The chief medical examiner, appointed pursuant to section one B of chapter thirty-eight, shall be secretary to the committee. Meetings may be called by the chairman, vice chairman, secretary, or any four members. A quorum for the transaction of business shall be eight members.

Said committee shall adopt such rules and regulations as are necessary or appropriate to effectively carry out the program of medicolegal investigation in the commonwealth under the provisions of chapter thirty-eight, including qualifications for appointment as medical examiners and associate medical examiners. All rules and regulations governing criminal investigations shall be subject to the approval of the attorney general. Said committee shall designate the location of the office of medicolegal investigation and shall establish requirements for personnel, equipment and supplies for the proper function of said office under a budget approved by the committee. Subject to appropriations, the funds needed for the establishment and function of said office shall be provided by the commonwealth.

Added by St.1977, c. 941, § 1.

CHAPTER 6A

EXECUTIVE OFFICES

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§ 1. Definitions

The following terms, as used in this chapter, shall, unless the context requires otherwise, have the following meanings:—

"Secretary", the head of an executive office established under section two.

"State agency", any department, office, commission, committee, council, board, division, bureau, institution, officer or other agency within the executive department.

Added by St.1969, c. 704, § 3.

EXECUTIVE OFFICE OF COMMUNITIES AND DEVELOPMENT

§ 8. Agencies within executive office of communities and development

There shall be within the executive office of communities and development the following state agencies: the department of commerce and development and all other state agencies within said department; the department of community affairs and all other state agencies within said department; the mobile homes commission; and the American and Canadian French cultural exchange commission.

Nothing in this section shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies except as expressly provided by law.

Added by St.1969, c. 704, § 3. Amended by St.1970, c. 862, § 3; St.1971, c. 204; St.1973, c. 1021, § 3; St.1973, c. 1168, § 7.

EXECUTIVE OFFICE OF CONSUMER AFFAIRS

§ 9. Agencies within executive office of consumer affairs

There shall be within the executive office of consumer affairs the following state agencies: the department of public utilities and all other state agencies within said department; the department of banking and insurance and all other state agencies within said department, including the small loans regulatory board and the trustees of the General Insurance Guaranty Fund; the division of registration established by section eight of chapter thirteen, including the several boards of registration serving therein, and the approving authority established by section two of chapter one hundred and twelve; the alcoholic beverages control commission; the consumers' council; the state racing commission; and the health, welfare and retirement trust funds board.

Nothing in this section shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies except as expressly provided by law.

Added by St.1969, c. 704, § 3. Amended by St.1974, c. 806, § 5.

§ 9A. Annual assessments of public utilities for payment of certain expenditures of attorney general; limit

The secretary of consumer affairs is hereby authorized to make an annual assessment against each electric, gas, telephone, and telegraph company doing business in the commonwealth and subject to the supervision of the department of public utilities, based upon intrastate operating revenues of each of such companies derived from the sales of electric, gas, telephone and telegraph services, respectively, as shown on the annual report or annual statement of each of said companies filed with the proper supervising agency. Said assessments shall be in such amounts as shall be determined and certified annually by the secretary of consumer affairs as sufficient to produce two hundred and fifty thousand dollars in revenue to the commonwealth and shall be assessed proportionately against each such company on the basis of said intrastate operating revenues of each such company; provided, however, that if the attorney general fails to expend in any fiscal year the total amount of two hundred and fifty thousand dollars for the purposes set forth under the provisions of section eleven E of chapter twelve, any amount unexpended in such fiscal year shall be credited against the assessment to be made in the following year and the assessment in such following year shall be reduced by such unexpended amount.

Assessments made under this section may be credited to the normal operating costs of each such company and shall be utilized by the attorney general solely for the purposes set forth under the provisions of section eleven E of chapter twelve.

Added by St.1973, c. 1244, § 1. Amended by St.1974, c. 691; St.1976, c. 266, § 2.

§ 9B. Collection of annual assessments made pursuant to section 9A

On or before the first day of October of the year in which an assessment is made pursuant to the provisions of section nine A, the secretary of consumer affairs shall certify to the commissioner of corporations and taxation the amount of the assessment to be made and the name and address of each company against whom such assessment is made. Such assessments shall be collected by the commissioner of corporations and taxation in accordance with applicable provisions of chapter sixty-three; provided, however, that each company shall pay the amount assessed against it within thirty days from the receipt of notice of assessment from the commissioner of corporations and taxation. The amount so collected shall be credited to the general fund.

Added by St.1973, c. 1224, § 1.

§ 10. Division of standards

There shall be a division of standards within the executive office of consumer affairs.

Added by St.1969, c. 704, § 3.

§ 11. Director of standards

The secretary, with the approval of the governor, shall appoint a director of standards and, with like approval, may remove him. Said director shall have charge of the division of standards and shall, in addition to the powers and duties conferred and imposed upon him by law, perform such other duties as may be assigned to him by the secretary.

Added by St.1969, c. 704, § 3.

§ 12. Inspectors, investigators, clerks, assistants; experts

Except as otherwise provided, the secretary may employ and remove such inspectors, investigators, clerks and other assistants as the work of the division of standards may require. He may employ, for periods not exceeding ninety days, such experts as may be necessary to assist said division in the performance of any duty imposed upon it by law, and such employment shall be exempt from chapter thirty-one.

Added by St.1969, c. 704, § 3.

§ 13. Duty, oath; powers, bond

The director of standards, and all inspectors and other permanent employees of the division of standards, shall devote their whole time to the affairs of said division. Said director, all such inspectors and such other employees of said division as may be designated by the secretary shall, before entering upon their duties, be sworn to the faithful performance thereof.

All such inspectors shall aid the director of standards in the performance of his duties, shall have all necessary powers therefor and shall give bond for the faithful performance of their duties. Whoever hinders, obstructs or in any way interferes with said director or any such inspector in the performance of any official duty imposed by law shall, except as otherwise provided, be punished by a fine of not more than three hundred dollars or by imprisonment for not more than two months.

Added by St.1969, c. 704, § 3.

EXECUTIVE OFFICE OF HUMAN SERVICES

§ 16. Agencies within executive office of human services

The following state agencies are hereby declared to be within the executive office of human services; the office for children, including the councils for children and the statewide advisory council established by sections seven and eight of chapter twenty-eight A, the department of social services, including the area advisory boards and the statewide advisory council established by sections thirteen and sixteen of chapter eighteen B, the department of public health and all other agencies within said department, including the commission on hypertension, the drug addiction rehabilitation board, and the several advisory councils established by section four D,[1] four F and fifty-five of chapter one hundred and eleven, but excluding such divisions and personnel which relate to the areas of environmental health, including air pollution control, noise regulation, community sanitation, water supply and water quality, noisome trades and sanitary landfills; the department of public welfare and all other state agencies within said department; the commission on supplemental security income, the department of mental health, including the several advisory councils established by sections eleven, twelve and sixteen of chapter nineteen, the several institutions within said department and their boards of trustees and all other state agencies within said department; the department of corrections, including the parole board and all other state agencies within said department; the advisory council on home and family, the commissioner of veteran's services; the board of trustees of the Soldiers' Home in Massachusetts and the board of trustees of the Soldiers' Home in Holyoke; the youth service board[2]; the advisory committee on service to youth; the division of youth service, including the several institutions within said division; the Massachusetts rehabilitation commission and the advisory council; the boxers' fund board; the health and welfare commission; the nutrition board; the health facilities appeals board; the rate setting commission established by section thirty-two and the Massachusetts commission for the blind and its advisory board, and all other state agencies within said commission.

Nothing in this section shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies except as expressly provided by law; provided however, that the secretary shall establish uniform regional and area boundaries for all agencies within the executive office of human services and further provided that the secretary shall establish uniform intake and referral forms, uniform contracting and payment procedures, and uniform standards for the monitoring and evaluation of all human services programs.

Added by St.1969, c. 704, § 3. Amended by St.1972, c. 776, § 2; St.1972, c. 785, § 2; St.1973, c. 1210, § 10; St.1973, c. 1229, § 1; St.1974, c. 806, § 7; St.1974, c. 833, § 3; St.1975, c. 706, § 8; St.1978, c. 552, § 4.

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[1] Repealed. See, now, c. 17, § 14.

[2] Abolished. See, now, department of youth services, c. 18A, § 1 et seq.

EXECUTIVE OFFICE OF PUBLIC SAFETY

§ 18. Agencies within executive office of public safety

The following state agencies are hereby declared to be within the executive office of public safety: the department of public safety and all other state agencies within said department, including the several boards established by sections eleven A, thirteen A and fourteen of said chapter; the boards established by sections seventy-one A and seventy-one H of chapter one hundred and forty-three, and the board of schoolhouse structural standards established by section one of chapter six hundred and seventy-five of the acts of nineteen hundred and fifty-five; the registry of motor vehicles; the governor's highway safety committee; and the Massachusetts police training council.[1]

Nothing in this chapter shall be construed as conferring any powers or imposing any duties upon the secretary with respect to the foregoing agencies except as expressly provided by law.

Added by St.1969, c. 704, § 3. Amended by St.1972, c. 802, § 2; St.1974, c. 806, § 8.

[1] Renamed the "Massachusetts criminal justice training council". See c. 6, § 116.

RATE SETTING COMMISSION

§ 31. Definitions applicable to sections 32 to 46

As used in sections thirty-two to forty-six, inclusive, unless the context clearly requires otherwise, the following words shall have the following meanings:

"Base period", the twelve-month period from April first, nineteen hundred and seventy-four, through March thirty-first, nineteen hundred and seventy-five.

"Charges", the amount to be billed or charged by a hospital to the general public for health supplies, care, services and accommodations in effect on October first, nineteen hundred and seventy-four, other than the differential between the average weighted semi-private room and board charges and private room and board charges. "Charges" shall also include, in the case of health supplies, care, services or accommodations not offered by the hospital on October first, nineteen hundred and seventy-four but offered for the first time after that date but for which notice was filed with the commission prior to that date, the amount billed or charged by a hospital to the general public for such health supplies, care, services or accommodations on the date such supplies, care, services or accommodations were first offered.

"Commission", the rate setting commission established under section thirty-two.

"Eligible person", a person who qualifies for financial assistance from a governmental unit in meeting all or part of the cost of general health supplies, care, social, rehabilitative or educational services and accommodations.

"General health supplies, care, social, rehabilitative or educational services and accommodations", all supplies, care and services of medical, optometric, dental, surgical, podiatric, psychiatric, therapeutic, diagnostic, rehabilitative, educational, supportive or geriatric nature, including inpatient and outpatient hospital care and services, and accommodations in hospitals, sanatoria, infirmaries, convalescent and nursing homes, rest homes, facilities established, licensed, or approved pursuant to the provisions of chapter one hundred and eleven B, and similar institutions including those providing treatment, training, instruction and care of children and adults.

"Governmental unit", the commonwealth, any department, agency, board or commission of the commonwealth, and any political subdivision of the commonwealth.

"Hospital", any hospital licensed under section fifty-one of chapter one hundred and eleven, the teaching hospital of the University of Massachusetts Medical School, and any psychiatric facility licensed under section twenty-nine of chapter nineteen.

"New charges", any charges for hospital supplies, care, services or accommodations which were not offered by the hospital on April fifteenth, nineteen hundred and seventy-five whether or not a determination of need by the department of public health under section twenty-five C of chapter one hundred and eleven was required as a prerequisite to offering the service. "New charges", shall not include charges filed with the commission prior to April fifteenth, nineteen hundred and seventy-five, to become effective after said date.

"Provider of health care services", any person, corporation, partnership, governmental unit, state institution and other entity which furnishes general supplies, care, services and accommodations to an eligible person.

"State institution", any hospital, sanatorium, infirmary, clinic and other such facility owned, operated or administered by the commonwealth or by any department, agency, board or commission of the Commonwealth, which furnishes general health supplies, care, social rehabilitative or educational services and accommodations.

Added by St.1973, c. 1229, § 2. Amended by St.1976, c. 409, § 1.

§ 32. Establishment; members, etc.; determination of rates for providers of health care services and state institutions; procedures; rules and regulations; reports; right of appeal; contracts

There shall be a rate setting commission, hereinafter called the commission, which shall have the sole responsibility for establishing fair, reasonable and adequate rates to be paid providers of health care services by governmental units, including the division of industrial accidents in the department of labor and industries, and for establishing fair and adequate charges, to be used by state institutions for general health supplies, care, social, rehabilitative or educational services and accommodations, which charges shall be based on the actual costs of each state institution reasonably related, in the circumstances of each institution, to the efficient production of such services in said institution. The commission shall consist of three members appointed by the governor with the advice of the secretary of the executive office of human services. They shall be residents of the commonwealth at the time of their appointment and shall be appointed for a term of three years. Each member shall hold office until the appointment and qualification of his successor. The commission shall consist of a Chairman who shall have administrative experience and an advanced degree in the field of business administration, public administration or law, and two other members of whom one shall be a certified public accountant and one shall be a person experienced in the field of medical economics. No more than two of such members shall be members of the same political party. The governor may with the advice of the secretary of the executive office of human services remove any member for cause, and, with like advice, shall fill any vacancy for the unexpired term. Each of said members shall devote full time to the duties of his office and shall not participate on or with any board, commission, committee or otherwise that would conflict with the fair, impartial, prudent and efficient full-time conduct of his office. The commission shall make an annual report to the secretary of the executive office of human services and to the general court the first Wednesday in November specifying the management of its affairs, a detailed analysis of its reimbursement policy for each class of providers of services and for state institutions, the coordination of its rate making function with the rule making functions of the departments of the commonwealth regulating said providers and institutions, and its recommendations for legislation, if any.

Each member shall receive a salary of thirty-three thousand one hundred and forty-six dollars and his necessary expenses incurred in the discharge of his official duties.

The commission: (1) shall determine, after public hearing, at least as often as annually, the rates to be paid by each governmental unit to providers of health care service; (2) shall determine, after public hearing, at least as often as annually, the rates to be charged by each state institution for general health supplies, care, social rehabilitative or educational services and accommodations; (3) shall certify to each affected governmental unit the rates so determined; (4) shall determine, after public hearing, at least as often as annually, and certify to the division of industrial accidents of the department of labor and industries rates of payment for general health supplies, care, social rehabilitative or educational services and accommodations, which rates shall be paid for services under the workmen's compensation act; (5) shall upon request of the commissioner of insurance assist him in performance of his duties as set forth in section four of chapter one hundred and seventy-six B; (6) may establish for rest homes, nursing homes and convalescent homes, fair and reasonable classifications upon which any rates may be based; provided, however, that the commission shall not cause a decrease in a rate or add a penalty to a rate because such home has an equity position which is less than zero. Said rates for nursing homes and rest homes, as defined under section seventy-one of chapter one hundred and eleven, shall be established as of July first of each year to reflect costs of a nursing home or rest home for the most recently reported fiscal year adjusted for the twelve months succeeding said July first. Notwithstanding any other law or regulation to the contrary, each governmental unit shall pay to a provider of services and each state institution shall charge as a provider of health care services as the case may be, the rates for general health supplies, care, social, rehabilitative and educational services and accommodations determined and certified by the commission.

In determining rates to be paid by governmental units to providers of services, the commission shall include as an operating expense of a provider of services any contribution made in lieu of taxes by such provider of services to a city or town, and shall establish by regulation those expenses treated as business deductions under the Internal Revenue Code which shall be included as allowable operating expenses in determining rates of reimbursement.

No hospital shall receive reimbursement or payment from any governmental unit for amounts paid to employees, as salary, or to consultant or other firms, as fees, where the primary responsibility of the employees or consultants is, either directly or indirectly, to persuade or seek to persuade the employees of the hospital to support or oppose unionization. Attorney's fees for services rendered in dealing directly with a union, in advising hospital management of its responsibilities under the National Labor Relations Act, or for services at an administrative agency or court or for services by an attorney in preparation for the agency or court proceeding shall not be deemed to be support or opposition to unionization.

The commission shall establish rates on a prospective basis, subject to rules and regulations promulgated by the commission whenever possible, provided however that, whenever the commission by regulation provides that a final rate for a reporting period shall be computed on the actual cost of a provider of services, or a state institution, for such period, it shall establish an interim rate for said provider or institution within twenty-one days of the beginning of said reporting period, from which interim rate said provider may appeal as provided under section thirty-six of this chapter.

The commission shall also adopt regulations to enable each provider or institution to secure adjustment in said interim rate from time to time to meet current reasonable costs. Said provider or institution shall have the right at any time to petition the commission for an increase in said interim rate. A petition for an adjustment in an interim rate shall include a certified statement that such a petition is not interposed for delay, a detailed explanation, under oath, of the basis upon which said increase is sought, together with a sworn statement of an independent licensed accountant or independent certified public accountant that he has examined the pertinent data relative to the accounts forming the basis of the petition and that in his opinion, said accounts are as represented by the petitioner. The petitioner shall provide such other information as the commission shall require. The commission subject to such rules and regulations as it may establish may waive the required independent audit for non-institutional providers whenever the commission determines that such audit would create a financial hardship on such provider. The director of the appropriate bureau shall report in writing his recommendations to the commission and to the petitioner, giving his reasons therefore in detail, and the petitioner shall have ten days to file objections, arguments and comments to the commission. The commission shall thereupon make a rate determination which shall become effective when filed with the state secretary. No appeal under section thirty-six of this chapter shall be allowed from an interim rate determined under this paragraph.

Whenever a final rate for a filing period is to be determined after the end of said period, the commission shall calculate a preliminary final rate within sixty-days after receipt of a satisfactory financial and operating cost report from a provider of services or state institution for such filing period. If said reports provide all the information required by the commission and are attested to by an independent licensed accountant or an independent certified public accountant in such a manner and form as the commission may require the commission may, prior to a field audit establish said preliminary final rate on the basis of said information submitted. No appeal may be taken from said preliminary final rate. Ninety per cent of the difference between the interim rate and said preliminary final rate shall become payable by or to governmental units when certified to the state secretary. Said preliminary final rate may be promulgated as the final rate of a provider of services or state institution if the commission is satisfied with a provider's report. In the event that a final rate is determined without a field audit the commission shall institute such procedures, including random field audits, as are required to assure accurate reporting by providers of health care services and state institutions. If the commission is not satisfied with the provider's report, the commission shall within six months and after a field audit promulgate a different rate of payment.

Except as otherwise provided in this section any person aggrieved by any rate determination made under this section shall have a right of appeal as provided under section thirty-six.

Each rate established by the commission shall be deemed a regulation and shall be reviewable as hereinafter provided. The commission shall promulgate rules and regulations for the administration of its duties and the determination of rates as are herein required subject to the procedures prescribed by chapter thirty A. Every rate, classification and other regulation established by the commission shall be consistent where applicable with the principles of reimbursement for provider costs in effect from time to time under Titles XVIII [1] and XIX [2] of the Social Security Act governing reimbursements or grants available to the commonwealth, its departments, agencies, boards, commissions or political subdivisions for general health supplies, care, social, rehabilitative and educational services and accommodations. The commission shall, prior to the establishment of any rate, classification or other regulation herein referred to, file a copy of the same with the budget director and with the house and senate committees on Ways and Means and the joint legislative committee on post audit and oversight.

In the performance of its duties, the commission may enter into such contracts or agreements with the federal government, a political subdivision of the commonwealth, or any public or private corporation or organization, as it deems necessary; provided, however, that the commission shall not enter into any contract or agreement with a private corporation or organization to furnish information and statistical data to be used by said commission as its sole basis for setting rates, if such private corporation or organization is to make or receive payments based upon the rates so set.

Added by St.1973, c. 1229, § 2. Amended by St.1977, c. 234, §§ 25 to 27; St.1977, c. 872, §§ 19 to 21; St.1979, c. 567; St.1969, c. 675, § 1.

[1] 42 U.S.C.A. § 1395 et seq.

[2] 42 U.S.C.A. § 1396 et seq.

§ 33. Bureaus; directors; executive secretary; staff personnel, tenure; cooperation of governmental units

The commission, subject to appropriation, shall establish such bureaus as may be necessary to carry out its duties as set forth in this chapter, including but not limited to a bureau of hospitals and a bureau of long-term care facilities. Each of said bureaus shall be under the direction of a director, appointed by the commission, who shall be responsible for the operation of said bureau and who shall report directly to the commission. Each director shall devote full time to the duties of his position and shall not participate in or with any board, commission, committee or otherwise which would conflict with the fair, impartial, prudent and efficient full-time conduct of his position. Said directors shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty.

The commission shall appoint an executive secretary whose duties shall be specified by the commission and who shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty, and may, subject to appropriation, appoint such other employees as may be necessary to efficiently administer its responsibilities. All employees so appointed, other than the directors of bureaus, the executive secretary, and attorneys appointed to serve as counsel to the commission, shall be subject to the provisions of chapter thirty-one and section nine A of chapter thirty. The commission may, subject to appropriation, use such resources, personnel and facilities as are available to it and as are necessary for the administration of its responsibilities.

Any person appointed under this section to a position which is not subject to the provisions of chapter thirty-one or section nine A of chapter thirty who, at the time of such appointment, was serving in a position which is classified under chapter thirty-one or in which he has tenure by reason of section nine A of chapter thirty, shall, upon termination of his service in said unclassified position, be restored to the position in which he was serving immediately prior to such appointment, if he so desires. Such restoration shall be made without impairment of civil service status or tenure under section nine A of chapter thirty and without loss of seniority, retirement or other rights to which said person would have been entitled had his service in the classified position been uninterrupted. Any such person so appointed shall during the term of his appointment, be eligible to take any competitive promotional examination to which he would have been entitled while in the classified position. If, however, the service of a person so appointed to an unclassified position is terminated for cause, then the rights to restoration granted under this paragraph shall be determined by the civil service commission in accordance with the standards applied by said commission in administering chapter thirty-one.

From time to time upon request of the commission, each governmental unit shall advise the commission of the general health supplies, care, social, rehabilitative and educational services and accommodations which it must provide, procure or for which it must pay.

Each governmental unit shall cooperate with the commission at all times in the furtherance of the commission's purposes. Each state institution shall permit the commission or any designated representatives thereof, to examine its books and accounts and shall file with the commission from time to time or upon request such data, statistics, schedules or other information as the commission may reasonably require.

Added by St.1973, c. 1229, § 2. Amended by St.1976, c. 409, § 2.

§ 34. Advisory council; subcommittees

There shall be an advisory council to the commission, consisting of the chairman of the commission, the commissioner of the department of public welfare, the commissioner of the department of social services, the commissioner of the department of public health, the commissioner of education, the secretary of the executive office of human services, the secretary of the executive office of elder affairs, the secretary of the executive office for administration and finance or their respective designees and sixteen members to be appointed by the commission for terms of three years. The commission shall fill any vacancy of members so appointed which may occur in the council for the remainder of the unexpired term. Of the appointed members, eight shall be providers, or representatives of provider organizations, whose rates of reimbursement are determined by the commission and eight shall be non-providers who have demonstrated experience in the field of consumer advocacy and who have no financial interest in any provider of services whose rates of reimbursement are determined by the commission.

Said provider shall be appointed to reflect the interests and concerns of all providers rendering services for which rates of reimbursement are established by the commission. No one provider group, organization of providers, or class of provider shall have more than one representative on said council unless each provider group or class of provider is represented on the council. Two of the non-provider members shall be selected from recommendations by state-wide organizations representing the interests of the elderly and two non-provider members shall be selected from recommendations made by state-wide labor organizations; provided, however, that one of the two non-provider members so selected from recommendations made by state-wide labor organizations shall be selected from recommendations made by the state labor council AFL–CIO. All appointed members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties.

The council shall meet at least three times annually and upon call of the chairman or on written application to the chairman by any eight members. The council shall annually elect a chairman from among its non-provider members. The council shall appoint at least one subcommittee for each of the bureaus of the commission, provided that at all times there are at least four council members on each subcommittee, two of whom are providers and two of whom are non-providers and provided that at all times the total subcommittee membership consists of equal numbers of providers and non-providers. The council may form such other subcommittees from time to time as it deems desirable.

The subcommittees shall from time to time make recommendations to the commission on matters of policy and operation of the commission and its various bureaus.

The subcommittees shall advise and consult with the directors of bureaus on matters of policy and operation of the bureaus, shall consider agenda items recommended by the directors of bureaus and any other matters proposed by the chairman of the council or a majority of the council members. The director of a bureau shall consult with the subcommittee which advises said bureau, and shall meet from time to time with said subcommittee to explain, discuss or review any matter of policy or operation relating to said bureau.

The subcommittees shall report to the council following each subcommittee meeting on its deliberations, communications, and recommendations, if any. The council shall remand all matters coming before it which relate to a specific bureau of the commission to the subcommittee advising that bureau for its review, comment and recommendations, if any. The council shall take final action on all matters coming before it and on any requests or recommendations of a subcommittee.

The council shall advise on the overall operation and policy of the commission and its bureaus, shall consider any item recommended by the commission, the chairman of the council, a majority of the council members or by a subcommittee of the council and shall have the right to at least sixty days prior review and comment on any proposed rule or regulation of the commission or any of its bureaus, with the exception of regulations promulgated on an emergency basis. The council shall be notified at least ten days in advance of any public meeting or hearing scheduled by the commission or any of its bureaus.

Added by St.1973, c. 1229, § 2. Amended by St.1978, c. 552, § 5.

§ 34A. Rate setting commission hospital policy review board

There shall be a rate setting commission hospital policy review board, in this section called the board, consisting of two members designated by the secretary of the executive office of human services and nine members appointed by the governor, two from a list of at least six recommendations submitted by the Massachusetts Hospital Association, one representing a teaching hospital and one representing a nonteaching hospital; one physician from a list of at least three recommendations submitted by the Massachusetts Medical Society; a nonprovider member of the governing board of a health system agency designated pursuant to Title XV of the federal Public Health Services Act;[1] one representing nonprofit hospital service corporations under chapter one hundred and seventy-six A; one representing companies authorized to sell accident and health insurance under chapter one hundred and seventy-five; and three nonproviders with experience in or knowledge of the delivery or financing of hospital services and who shall represent the interests and concerns of business, labor and elderly, respectively. Each member appointed by the governor shall serve for a term of three years and until his successor is duly qualified; provided, that in making his initial appointments to the board under this section, the governor shall appoint three members for terms of one year each, three members for terms of two years each and three members for terms of three years each. The governor shall fill any vacancy for the remainder of the unexpired term. All appointed members shall be reimbursed for their necessary expenses incurred in the performance of their duties. The board shall annually elect a chairman from the appointed members. The board shall meet at least four times annually and upon call of the chairman or written application to the chairman of any two members. The board shall adopt operating procedures governing the conduct of its activities.

The board shall have the right to at least sixty days prior review and comment on any proposed rule or regulation of the commission, except for rules or regulations promulgated on any emergency basis, issued pursuant to sections thirty-seven to forty-six, inclusive. The commission shall issue an explanatory statement which shall accompany its proposed regulations. The board shall consider any item within the purview of sections thirty-seven to forty-six, inclusive, recommended by the commission, the chairman of the board or any two board members. The board shall, within thirty days of receipt of a proposed rule or regulation, submit written comments to the commission recommending approval, disapproval or partial approval. In the event the commission determines not to accept any such recommendation, it shall prepare a written statement of its reasons for disagreement, which statement shall be submitted to the board within twenty days of receipt of the board's recommendations, and shall, together with the board's recommendations be included in the record of any public hearing held on such proposed rule or regulation. Any member of the board may participate in any such public hearing by presenting reports, studies, witnesses and testimony. The commission shall not promulgate any rule or regulation or part thereof which is the subject of a board recommendation of disapproval for at least twenty-one days after submission of such a statement in order to provide the board an opportunity, upon the call of a majority of those members present, to hold a public hearing on its recommendations. The board shall, upon call of at least four of its members, hold a public hearing on matters relating to the commission's policies and activities carried out pursuant to sections thirty-seven to forty-six, inclusive.

The board shall report periodically, but at least as often as annually, to the governor and the general court, with copies to the joint legislative committee on health care, on its findings, opinions and recommendations for legislation.

The commission shall, subject to appropriation, afford office and meeting space, clerical assistance and funds for necessary expenses for the board.

Added by St.1976, c. 409, § 3.

[1] 42 U.S.C.A. § 300k–1 et seq.

§ 35. Payments to providers of health care services; conditions; violations; penalty; court order; suspension or revocation of license

Any provider of health care services which receives reimbursement or payment from any governmental unit for general health supplies, care, social, rehabilitative and educational services and accommodations shall, as a condition of the receipt of such reimbursement or payment: (1) permit the commission, or any designated representative thereof, to examine such books and accounts as may reasonably be required for it to perform its duties; (2) file with the commission from time to time or on request, such data, statistics, schedules or other information as it may reasonably require, including such information regarding the costs, if any, of such provider for research in the basic biomedical or health care delivery areas or for the training of health care personnel which are included in its charges to the public for health care services, supplies, and accommodations; (3) accept reimbursement or payment at the rates established by the commission, subject to a right of appeal under section thirty-six, as discharging in full any and all obligations of an eligible person and the governmental unit to pay, reimburse or compensate the provider of health care services in any way for general health supplies, care, social, rehabilitative and educational services or accommodations provided.

Any provider of health care services which knowingly fails to file with the commission data, statistics, schedules or other information required pursuant to this section or by any regulation promulgated by the commission or which knowingly falsifies the same shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

If, upon application by the commission or its designated representative, the superior court upon summary hearing determines that a provider of health care services has without justifiable cause refused to permit any examination or to furnish information, as required in this section, it shall issue an order directing all governmental units to withhold making payment for general health supplies, care, social, rehabilitative and educational services and accommodations to such provider of services until further order of the court.

In addition, the appropriate licensing authority may suspend or revoke, after an adjudicatory proceeding in accordance with chapter thirty A, the license of any provider of services which knowingly fails to file with the commission data, statistics, schedules or other information required by this section or by any regulation of the commission or which knowingly falsifies the same.

Added by St.1973, c. 1229, § 2. Amended by St.1977, c. 945, § 1.

§ 36. Appeal to division of hearings officers; proceeding; decision, final determination or remand; judicial review

Any person, corporation or other party aggrieved by an interim rate or a final rate established by the commission, or by failure of the commission to set a rate or to take other action required by law and desiring a review thereof shall, within thirty days after said rate is filed with the state secretary or may, at any time, if there is a failure to determine a rate or take any action required by law, file an appeal with the division of hearings officers established by section four H of chapter seven. Any appeal filed under this section shall be accompanied by a certified statement that said appeal is not interposed for delay. On appeal, the rate determined for any provider of services shall be adequate, fair and reasonable for such provider, based, among other things, on the costs of such provider.

On an appeal from an interim rate or a final rate the division of hearings officers shall conduct an adjudicatory proceeding in accordance with chapter thirty A, and said division shall file with the commission and the state secretary within thirty days after the conclusion of the hearing its decision.

Said decision shall contain a statement of the reasons therefore, including a determination of each issue of fact or law on which the decision was based. If said decision results in a recommendation for a rate different from that certified, the commission shall based upon statement of reasons establish a new rate. If the commission determines that the statement of reasons is inadequate to determine a fair, reasonable and adequate rate, it may remand the appeal to the hearing officer for further investigation. Any party aggrieved by a decision of the commission may, within thirty days of the receipt of such decision, file a petition for review in superior court for the county of Suffolk, which shall have exclusive jurisdiction thereof.

A provider may appeal as an aggrieved party in accordance with the provisions of the preceding sentence in the event that a remand by the Commission to a hearing officer does not result in a final decision by the Commission within twenty-one days of the date of remand.

The petition shall set forth the grounds upon which the decision of the division should be set aside. The aggrieved party shall within seven days after the petition for review is filed, notify the division and all the parties to the appeal before said division that a petition for review has been filed by sending each a copy thereof. Within forty days after the petition for review is filed, or within such further time as the court may allow, the division of hearings officers shall file in court the original or a certified copy of the record under review. The court may affirm, modify or set aside the decision of the division in whole or in part, remand the decision to the division for further proceedings, or enter such other order as justice may require. Nothing herein shall prevent the Commission from granting temporary relief if, in its discretion, the same is justified nor, from informally adjusting or settling controversies with the consent of the parties.

Judicial review by the court shall be governed by section fourteen of chapter thirty A to the extent not inconsistent with the provisions of this section.

Added by St.1973, c. 1229, § 2.

§ 37. Modifications in charges; approval; procedures; regulations

Any hospital which proposes to modify its charges shall submit an application therefor for approval by the commission at least sixty days prior to the implementation of such modification. Information supporting the proposed modification in charges, including a budget and projected actual costs, volume and revenue data shall be furnished with the application. The commission may approve or disapprove such applications in whole or in part. Approval of any proposed modification in charge shall be deemed granted in the absence of written notification by the commission to the contrary, stating the reasons supporting the commission's action, within sixty days of such submission.

The commission shall from time to time issue regulations setting forth the procedure and substantive standards to be applied in reviewing applications for approval of modifications in charges. Said regulations shall provide that requested modifications in charges shall be supported by the reasonableness of the underlying costs and shall provide for the approval of proposed modifications in charges if: (*a*) the increase proposed is consistent with the rate of inflation in the economy generally, as measured by a composite price index to be specified in such regulations and based to the extent practicable, on any such index approved by the commission and contained in agreements subject to approval under the provisions of section five of chapter one hundred and seventy-six A; (*b*) any increase beyond that allowed by virtue of application of such index results from increase in volume not otherwise off-set by decreases in volume, such volume increases or decreases to be measured in a manner specified in such regulations; and (*c*) such increases, not otherwise justified by clauses (*a*) and (*b*), result from cost increases beyond the reasonable control of the individual hospital.

No such modification of charges shall be approved if it includes funds which may be paid to employees, as salary, or to consultant or other firms, as fees, where the primary responsibility of the employees or consultants is, either directly or indirectly, to persuade or seek to persuade the employees of the hospital to support or oppose unionization. Attorney's fees for services rendered in dealing directly with a union, in advising hospital management of its responsibilities under the National Labor Relations Act, or for services at an administrative agency or court for services by an attorney in preparation for the agency or court proceeding shall not be deemed to be support or opposition to unionization.

The commission shall provide for modification in charges if the applicant hospital's ratio of total patient care costs to total patient care charges for the applicable fiscal year exceed ninety-five per cent, such modification to permit said hospital to establish the ratio at ninety-five per cent. In the case of an applicant hospital for which such ratio equals or is less than ninety-five per cent, the commission shall not approve any requested modification or part thereof, which would produce a ratio of total patient care costs to total patient care charges in the applicable fiscal year which is below the applicant hospital's base period of total patient care cost to total patient care charges.

In reviewing applications under this section, the commission may consider changes in charges necessary to cover changes in intensity of services and changes in medical practice. In developing such regulations, the commission shall consult with representatives of nonprofit hospital service corporations, the elected representatives of health systems agencies designated pursuant to Title XV of the federal Public Health Service Act,[1] the Massachusetts Hospital Association, and companies authorized to sell accident and health insurance under chapter one hundred and seventy-five.

Added by St.1976, c. 409, § 4. Amended by St.1979, c. 675, § 2.

[1] 42 U.S.C.A. § 300k-1 et seq.

§ 38. New charges; approval; supporting data; regulations

Any hospital which intends to implement a new charge shall submit an application for approval of such new charge to the commission at least sixty days prior to the implementation of such new charge. Information supporting the new charge, including a budget and projected cost, volume, utilization and revenue data resulting from the new charge shall be furnished with the application. The commission may approve or disapprove such applications in whole or in part. Approval of any proposed new charge shall be deemed granted in the absence of written notification by the commission to the contrary, stating the reasons supporting the commission's actions, within sixty days of such submission.

The commission shall from time to time issue regulations setting forth the procedure and substantive standards to be applied in reviewing an application for new charges. In reviewing such application, the commission shall consider the relation of the proposed charge to the reasonable cost of such health supplies, care, services, or accommodations, provided that the commission may not establish a charge for such item which is less than the hospital's base period ratio of total patient care costs to total patient care charges.

Added by St.1976, c. 409, § 4.

§ 39. Hospital budgets, including actual and projected patient care costs and charges; filing; approval

For each fiscal year beginning with the fiscal year nineteen hundred and seventy-eight, every hospital, whether or not proposing to modify its charges or implement any new charge, shall, at least sixty days prior to the start of its fiscal year, file with the commission a copy of its budget, including projected and actual cost, volume and revenue data, the charge schedule supporting the revenue projection, and such other information as the commission shall require, including pertinent information, if any, regarding anticipated changes in intensity of service and medical practice, or either of them. The budget of any hospital proposing no modification of its charges nor implementation of any new charge shall not be subject to approval or disapproval in whole or part by the commission unless the commission determines by application of the standards and criteria specified in section thirty-seven and in regulations of the commission issued thereunder that the filing hospital's ratio of total patient care costs to total patient care charges shall be below ninety-five per cent or such ratio for the hospital's base year; in which event the commission shall approve or disapprove in whole or part total patient care costs and total patient care charges.

Added by St.1976, c. 409, § 4.

§ 40. Reviewing of applications for approval of charges, and of hospital budgets; adoption of methodology

Not later than October first, nineteen hundred and seventy-nine, the commission shall, for the purpose of thereafter reviewing applications submitted under section thirty-seven or section thirty-eight and budgets filed under section thirty-nine, develop and adopt, by regulations issued hereunder, a methodology for reasonably grouping and comparing hospitals by any or all of the following criteria: size, service, department and other criteria appropriate for comparison. Such methodology shall be adopted by the commission only upon consultation with representatives of nonprofit hospital service corporations incorporated under chapter one hundred and seventy-six A, elected representatives of health systems agencies designated pursuant to Title XV of the federal Public Health Service Act,[1] companies authorized to sell accident and health insurance under chapter one hundred and seventy-five and the Massachusetts Hospital Association, and provided that, in acting on any such application, or on any such budget when such action shall be required, the commission shall approve or disapprove in whole or in part only the total patient care costs and total patient care charges projected by the applicant or filing hospital.

Added by St.1976, c. 409, § 4.

[1] 42 U.S.C.A. § 300k-1.

§ 41. Modifications in charges subsequent to April 15, 1975; application for approval; exception; review; adjustments

Any hospital which has modified its charges or implemented new charges for health supplies, care, services or accommodations subsequent to April fifteenth, nineteen hundred and seventy-five and prior to the effective date of regulations issued by the commission under section thirty-seven or section thirty-eight, as the case may be, shall file an application for approval of such modification in charges or such new charges within twenty days of the effective date of such regulations.

The provisions of this section shall not apply to modifications in charges which were effective on or after April fifteenth, nineteen hundred and seventy-five, notice of which was filed with the commission prior to that date. The procedures and substantive standards established by the commission under section thirty-seven for modifications in charges or under section thirty-eight for new charges, whichever is applicable, shall be applied by the commission in reviewing such application. Disapproval in whole or in part by the commission of such modification in charges or proposed new charges by any hospital shall result in the hospital adjusting such charges to the extent required by the commission effective ten days after receipt of such notice of commission action, provided that no adjustment shall result in a charge less than that in effect on April fifteenth, nineteen hundred and seventy-five.

Added by St.1976, c. 409, § 4.

§ 42. Appeal in accordance with section 36

Any hospital aggrieved by any action of the commission on any application submitted under section thirty-seven or section thirty-eight, or on any budget filed under section thirty-nine, may file an appeal in accordance with section thirty-six of chapter six A.

Added by St.1976, c. 409, § 4.

§ 43. Budgets of hospitals; submittal

Each hospital shall submit to the commission a copy of the hospital's budget, duly approved by its governing board, at least thirty days prior to the commencement of its fiscal year, or within ten days following board approval, whichever is later. For hospitals with fiscal years commencing prior to October first, said budgets for the fiscal year ending in nineteen hundred and seventy-six shall be submitted within thirty days.

Added by St.1976, c. 409, § 4.

§ 44. Violations; civil penalty; enforcement

Any hospital which makes a charge or accepts payment based upon a charge in excess of that approved by the commission under sections thirty-seven, thirty-eight and thirty-nine or which fails to file with the commission data, statistics or schedules or other information required by any regulation promulgated by the commission or which falsifies the same shall be subject to a civil penalty of not more than one thousand dollars for each day on which such violation occurs or continues, which penalty may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. The attorney general of the commonwealth shall bring any appropriate actions including injunctive relief as may be necessary for the enforcement of the provisions of sections thirty-seven to forty-six, inclusive.

Added by St.1976, c. 409, § 4.

§ 45. Standard systems for determining, etc., costs and charges

The commission may, by regulations issued hereunder, specify standard systems for determining, reporting, and auditing the costs and charges of every hospital, including methods by which each hospital shall allocate its costs and revenues and shall record its assets, liabilities, units of service, and departmental data; which recording shall not be in variance with generally accepted accounting principles. Such regulations shall provide for appropriate variations in such systems designed to reflect differences in size, scope of services, and administrative capacity of hospitals.

Added by St.1976, c. 409, § 4.

§ 46. Experimental or demonstration projects for determining, etc., hospital costs and charges; criteria and procedures; agreements

For the purposes of any experimental or demonstration project designed to test the relative advantages and disadvantages of alternative methods of determining, reporting, and auditing the costs and charges of any hospital or hospitals or to promote, through financial incentives, the more efficient use of the personnel and facilities of any hospital or hospitals, the commission may, with the written agreement of any such hospital or hospitals, and of any third-party purchasers of patient care services, supplies, and accommodations therefrom as may choose to participate in such project, develop and implement criteria and procedures for action as to such hospital or hospitals which may differ from such criteria and procedures previously established.

Added by St.1976, c. 409, § 4.

CHAPTER 7

EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE

Sec.
6B. State house physician; assistants.
6E. State office buildings physician; appointment; quarters; duties; salary; assistants.

BUREAU OF BUILDING CONSTRUCTION
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40. Powers and duties of director; projects.
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43. Changes in plans; specifications; contracts.
44. Appeals from decisions of director; regulations.
45. Additional powers and duties of director.
46. Requests for projects; report.
47. Regulations.
48. Federal funds or assistance.

§ 6B. State house physician; assistants

The commissioner shall appoint a duly qualified and licensed medical doctor as state house physician to serve under the commissioner and at its pleasure. He shall be provided with suitable quarters in the state house for the sole purpose of rendering necessary first aid and emergency medical treatment in and about the state house in accordance with such rules and regulations as the commissioner may from time to time prescribe. He shall receive such salary as may be established by the commissioner and may employ, subject to the approval of the commissioner, such nursing and other assistants as he deems necessary.

Added by St.1951, c. 440, § 1. Amended by St.1962, c. 757, § 9.

§ 6E. State office buildings physician; appointment; quarters; duties; salary; assistants

The commissioner shall appoint a duly qualified and licensed medical doctor as state office buildings physician who shall not be subject to chapter thirty-one and may be removed for cause.

He shall be provided with suitable quarters in the state office building for the purpose of rendering first aid and emergency medical treatment in and about the state office building in accordance with such rules and regulations as the commissioner may from time to time prescribe. He shall receive such salary as may be established by the commissioner and may employ, subject to the approval of the commissioner, such nursing and other assistants as he deems necessary.

Added by St.1971, c. 557.

BUREAU OF BUILDING CONSTRUCTION

§ 39. Establishment; director; deputy director; qualifications; staff

There shall be within the central services division of the executive office for administration and finance a bureau of building construction headed by a director of building construction. Said director shall be the chief engineer of the bureau of building construction.

The director of building construction and a deputy director of building construction shall each be appointed by the commissioner, with the approval of the governor, and may be removed, in like manner. Each shall be a person of ability and experience; and shall devote his entire time to the duties of his office. Neither of said offices shall be subject to section nine A of chapter thirty or chapter thirty-one. No person shall be appointed director or deputy director of said bureau unless at the time thereof he shall be registered by the commonwealth as an architect or professional engineer pursuant to the provisions of chapter one hundred and twelve and shall have proven ability and extended experience in the design and construction of buildings.

The commissioner shall appoint all other officers and employees in said bureau, and all such appointments shall be made in accordance with chapter thirty-one.

The commissioner shall be responsible for the exercise of all powers and the performance of all duties assigned by law to said bureau, which shall be under his direction, control and supervision.

Added by St.1975, c. 311, § 2.

§ 40. Powers and duties of director; projects

Except as otherwise provided in this section or by any appropriation act, the director of building construction shall, in the manner and to the extent provided by this chapter, have control and supervision of all building construction projects, as hereinafter defined, which may be undertaken by the commonwealth or by any county. Such projects shall include any project financed in whole or in part by appropriation, bond issue or federal funds, the estimated cost of which shall exceed ten thousand dollars, and which shall be undertaken for demolition of or construction of any building and appurtenant structures, facilities and utilities, including original equipment and furnishings thereof. Such projects shall also include any project the estimated cost of which, in the case of the commonwealth, shall exceed ten thousand dollars, and in the case of a county, shall exeed fifty thousand dollars, for the alteration, repair or addition to any existing building and appurtenant structure, facility and utility; provided such alteration, repair or addition requires alteration of the structural or mechanical design of the building, structure or utility. Such projects shall not include projects involving the ordinary repair or maintenance of such buildings, structures or utilities not requiring structural or mechanical alterations, and responsibility for such repair or maintenance projects shall rest with the operating agency unless otherwise specified by the act in which funds for the project are appropriated. Such projects shall not include any project undertaken by or on behalf of any city or town or other local authority, or appurtenant buildings or structures which are required to be constructed as integral parts of the development or improvement of sewer, water and highway systems.

The commissioner may after consultation with said director and the agency or county for which the project shall be undertaken, hereinafter called the operating agency, direct that any such project shall be undertaken by the operating agency free from the control and supervision of said director, subject, however, to the following conditions: that, as far as feasible, the standard contract documents and specifications referred to in section forty-one shall be used in connection with the project; that no person shall be engaged as a designer on the project who shall not have the qualifications required by section thirty B; that the operating agency shall file with said director certified copies of the working plans and specifications for the project and of all changes therein; that the commissioner may at any time or times add such other conditions to such exemption as in his opinion would benefit the commonwealth; and that the commissioner shall transfer from the bureau of building construction to the operating agency the funds available for the project.

For the purposes of sections forty-one and forty-two, the word "project" or "projects" shall mean any project which shall, in accordance with this section, be subject to the control and supervision of said director.

Added by St.1975, c. 311, § 2. Amended by St.1975, c. 793, § 2.

§ 41. Contracts with designer; clerk-of-the-works

The contract which the director of building construction shall make with the designer appointed under section thirty B shall provide, among other appropriate terms, that the designer shall: in consultation with the operating agency and subject to its initial approval, prepare plans and specifications for the project for submission to said director for his approval; so far as feasible, use standard contract documents and specifications which said director shall have prepared and made available in the bureau of building construction; be charged with general supervision of construction of the project; appoint and employ a qualified clerk-of-the-works for the project who shall be approved by the director, shall devote full time to the work of the project, oversee continuously the detail of construction, keep informed at all times of the financial status of the project, and make such investigations for and reports and recommendations to the designer or the director as either may require; and subject to the approval of the said director, be currently reimbursed for all expenses incurred in connection with the employment of such clerk-of-the-works.

No person shall be so appointed and employed as clerk-of-the-works unless at the time thereof he shall be registered by the commonwealth as an architect or professional engineer under the provisions of chapter one hundred and twelve, shall have had at least five years experience in the construction and supervision of construction of buildings for an architectural, engineering or construction firm or association, and shall have proven ability to estimate construction costs and to keep accurate records and accounts thereof; or if not so registered, he shall have had at least ten years of such experience and shall have such proven ability to estimate construction costs and to keep records and accounts thereof.

If the designer shall not, within thirty days following final approval of the plans and specifications for the project, so appoint and employ such a clerk-of-the-works, the director shall, on behalf of the commonwealth, appoint and contract with a qualified clerk-of-the-works for the project; provided, however, that the director may exempt any project from the necessity of having a clerk-of-the-works or of having a clerk-of-the-works who shall have the qualifications required by this section, if in his opinion such exemption would benefit the commonwealth.

Added by St.1975, c. 311, § 2.

§ 42. Plans and specifications; approval; award of contracts

No obligation shall be incurred or payment made for preparation of any plans or specifications for any project without the prior approval of the director of building construction; and in the case of a project undertaken on behalf of the commonwealth, no plans or specifications, other than preliminary plans or specifications, shall be prepared until a special appropriation shall have been made therefor or for the project or until federal funds or assistance shall have been made available therefor. No other obligation shall be incurred or payment made in connection with any project until such obligation or payment shall have been approved in accordance with sections thirty-nine to forty-eight, inclusive.

Working plans and specifications for each project shall, following initial approval thereof by the operating agency, be submitted by the designer to the director for his approval. In reviewing such plans and specifications, the duty of the director shall be to see that they are clear and complete and permit execution of the project with economy and efficiency.

Following final approval of such plans and specifications, the director shall advertise in a reasonable number of newspapers for proposals for performance of the work of the project; except that the commissioner may direct that the purchase of any materials, original equipment or original furnishings for the project shall be made under the provisions of sections twenty-two to twenty-six, inclusive. Subject to the prior approval of the commissioner and to the applicable provisions of sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine, he shall award the contract or contracts for such work to the lowest responsible eligible bidder; but no such contract on behalf of the commonwealth shall be awarded by him for a sum in excess of the amount which the comptroller shall certify to be available therefor. If the director shall knowingly award a contract in violation of any provision of this section, he may be removed from office by the governor.

Added by St.1975, c. 311, § 2.

§ 43. Changes in plans; specifications; contracts

A request for any change in the plans, specifications or contracts for any project may be initiated by the operating agency, the designer, any contractor or subcontractor working on the project, or the director of building construction, and shall be processed within the time limits set forth in section thirty-nine P of chapter thirty. Such request shall be submitted first to the clerk-of-the-works. He shall examine and forward the same, with his recommendations, to the designer and simultaneously furnish copies thereof to the director and the operating agency. The designer shall then examine and forward the same, with his recommendations, to the director and simultaneously furnish copies thereof to the operating agency. The director shall approve or disapprove the request; provided, however, that if the regulations of the commissioner under this section shall so require, the approval granted by the director shall not be effective without the approval also of the operating agency and the commissioner. The commissioner may make, alter, amend or repeal such rules and regulations as he may deem necessary for the purposes of this section.

If the request shall be approved, said director shall forthwith issue a formal change order to the contractor and shall send copies thereof to the comptroller, the operating agency and the designer.

If the director disapproves the request, he shall forthwith so notify in writing the designer, the operating agency and the requesting party also; and the requesting party or the operating agency may, within five days following receipt of such notice, appeal such disapproval to the commissioner. Such appeal shall set forth in writing the reasons therefor and a copy thereof shall be furnished to the director at the time the appeal is filed with the commissioner. The commissioner shall, within ten days following receipt of such an appeal, render a written decision thereon.

The provisions of section twenty A of chapter twenty-nine shall not apply to any change-order request submitted and acted on in accordance with this section.

Added by St.1975, c. 311, § 2.

§ 44. Appeals from decisions of director; regulations

Whenever the director of building construction disapproves any plan, specification, contract, appointment of a clerk-of-the-works or payment for any project, he shall forthwith notify the requesting party, the designer and operating agency in writing of his reasons therefor. Within three days following receipt of such notice the requesting party, the designer or operating agency may appeal such action to the commissioner, in which event the commissioner shall decide the matter.

Any such appeal shall set forth in writing the reasons therefor and a copy thereof shall be furnished to the director at the time the appeal is filed with the commissioner.

The commissioner may adopt and issue, and from time to time amend or repeal, regulations governing the hearing and deciding of appeals to it permitted under this section from actions of said director and governing exercise of any other powers and duties given the commissioner by sections thirty-nine to forty-eight, inclusive. Such regulations shall become effective when they shall have been approved by the governor and a copy thereof shall have been filed with the state secretary. The commissioner shall cause printed copies of such regulations to be made available to said director for general distribution.

As used in this section and section forty-three, the word "days" shall not include Saturdays, Sundays or legal holidays.

Added by St.1975, c. 311, § 2.

§ 45. Additional powers and duties of director

In addition to the powers and duties given him, the director of building construction shall have the following powers and duties:

1. From time to time he shall cause each project to be inspected to determine the quality of construction thereof and to assure that

the project and construction thereof shall comply with the plans, specifications and contracts therefor.

2. He shall be responsible for accepting or rejecting each project upon its completion and for directing final payment for work done thereon; provided, however, that if upon inspection of any project for acceptance he shall find that the plans, specifications, contracts or change-orders for the project shall not have been fully complied with or that the operating agency shall for any reason object to his acceptance of the project, he shall, until such compliance has been effected, such objection has been removed or adjustment satisfactory to him has been made, refuse to accept the project and direct such payment.

3. Upon acceptance of the project, he shall release the same to the operating agency.

4. From each agency of the commonwealth which has or shall have charge of any building owned by or maintained at the expense of the commonwealth, he shall request, and the agency shall promptly furnish, periodic maintenance reports in such form and containing such information as he shall from time to time determine.

Added by St.1975, c. 311, § 2.

§ 46. Requests for projects; report

The commissioner shall cause the director of building construction to examine all requests for projects as provided in section seven of chapter twenty-nine. The director of building construction, with the approval of the commissioner, may develop projects of his own whenever in his judgment the maintenance of state-owned property requires such improvements to prevent deterioration or costly future repairs. Said director shall cause to be made and filed with him preliminary plans and descriptive specifications sufficient for a careful estimate by a competent expert; and for such purpose such sums as may be appropriated or otherwise made available therefor may, with his approval, be expended and he may, with the approval of the commissioner, employ temporarily such architects, engineers, contractors and consultants as may be necessary.

Annually said director shall submit a list containing all such projects so requested to the commissioner on or before a date set by the commissioner. Such report shall show the estimated cost of each such project.

Added by St.1975, c. 311, § 2.

§ 47. Regulations

The director of building construction may adopt and issue, and from time to time amend or repeal, such regulations as he shall deem necessary or desirable to expedite the work of the bureau of building construction. Such regulations shall become effective when they shall have been approved by the commissioner and a copy thereof shall have been filed with the state secretary. Printed copies of such regulations shall be available for general distribution.

Added by St.1975, c. 311, § 2.

§ 48. Federal funds or assistance

The director of building construction may, with the approval of the commissioner and the governor, accept on behalf of the commonwealth any federal funds or assistance for financing the cost of plans and specifications for any project.

If such funds or assistance shall be appropriated for aiding construction of any project, the director may, with like approval, apply for the same and may, with the approval of the governor, accept the same on behalf of the commonwealth. Any project so aided shall be executed in all respects subject to applicable federal law and rules and regulations and also to the applicable provisions of this chapter not inconsistent therewith.

Added by St.1975, c. 311, § 2.

CHAPTER 10

DEPARTMENT OF THE STATE TREASURER

Sec.

17. Trust funds; institutions under supervision of mental health department; authority to receive; duties.

§ 17. Trust funds; institutions under supervision of mental health department; authority to receive; duties

The state treasurer may receive the principal of any fund given or bequeathed to the commonwealth or to the department of mental health for the use of insane, feeble-minded or epileptic persons or those addicted to the intemperate use of narcotics or stimulants in any institution or placed under the supervision of said department; and upon its request he shall expend the income of all such funds, and such part of the principal as may be subject to the control of said department, in such manner as it may direct, subject to any condition affecting the administration thereof. Said funds shall be invested safely by the state treasurer, and he shall be held responsible for the faithful management of the same in the same manner as for other funds held by him.

Amended by St.1941, c. 194, § 1.

CHAPTER 12

DEPARTMENT OF THE ATTORNEY GENERAL, AND THE DISTRICT ATTORNEYS

DEPARTMENT OF THE ATTORNEY GENERAL

Sec.
11C. Narcotic and harmful drugs; training program for law enforcement officers.
11D. Division of environmental protection.

DEPARTMENT OF THE ATTORNEY GENERAL

§ 11C. Narcotic and harmful drugs; training program for law enforcement officers

The attorney general shall establish a program designed to train law enforcement officials, including municipal, metropolitan and state police, in practices and procedures relating to the narcotic and harmful drug laws of the commonwealth. The program shall include, but shall not be limited to, the dissemination of information concerning:

(1) the laws of the commonwealth relating to the possession, sale, and manufacture of narcotic and harmful drugs;

(2) the methods and procedures for detecting and ascertaining the identity of the various narcotic and harmful drugs;

(3) law enforcement techniques, intelligence operations, and methods of promoting cooperation among the municipal, metropolitan, and state police departments;

(4) search and seizure techniques in accordance with the Constitution of the United States and with the Constitution and laws of the commonwealth;

(5) the physiological and psychological effects of the various narcotic and harmful drugs;

(6) the underlying psychological and sociological causes of drug use and drug abuse;

(7) opportunities for treatment and rehabilitation of drug dependent persons; and

(8) educational programs relating to drugs sponsored by the department of education, other public agencies, and private organizations.

The attorney general may call upon the commissioner of public safety to assign to him not more than six officers of the uniformed branch of the state police for assistance in performing the duties imposed upon him by this section.

The attorney general may appoint such expert, clerical and other staff members as the operation of the training program may require.

Added by St.1969, c. 889, § 3.

§ 11D. Division of environmental protection

There shall be in the department of the attorney general a division of environmental protection. The attorney general shall designate an assistant attorney general as director of said division. Said director may appoint and remove, subject to the approval of the attorney general, such expert, clerical or other assistants as the work of the division may require.

The attorney general shall have the authority to prevent or remedy damage to the environment caused by any person, body corporate or politic or any agency, department, board, commission, division or authority of the commonwealth or any political subdivision thereof at the request of an appropriate agency or on his own initiative, by commencing or intervening in a proceeding before an appropriate agency, department, board, commission, division or authority, whether state or federal, and before any political subdivision of the commonwealth, or by commencing or intervening in any suit or action, civil or criminal, to enforce any statute, ordinance, by-law or regulation or to secure any common law right or remedy including, but not limited to, the abatement of public nuisances, provided, however, it shall be a defense to any action taken pursuant to this section that any such person is subject to, and in compliance in good faith with, a judicially enforceable administrative pollution abatement schedule or implementation plan the purpose of which is alleviation of damage to the environment.

Each agency, board, commission, division and authority of the commonwealth shall give written notice to the attorney general of all adjudicatory proceedings or public hearings in which damage to the environment is or may be at issue; provided, however, that failure to give such notice shall not invalidate such proceeding or public hearing.

As used in this section, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources in the commonwealth and shall include, but shall not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, or the impairment or eutrophication of rivers, streams, flood plains, lakes, ponds or other surface or subsurface water resources, destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks or historic districts or sites. Damage to the environment shall not include any insignificant destruction, damage or impairment to such natural resources.

The attorney general shall receive and maintain appropriate records of complaints from interested persons relating to damage to the environment, and upon the receipt thereof shall refer the same to an appropriate agency or subdivision of the commonwealth for such further corrective action as may be necessary to prevent or remedy damage to the environment.

The attorney general may investigate the administration of environmental statutes, ordinances or regulations by an agency, department, board, commission, division or authority of the commonwealth or of any political subdivision thereof and may make such recommendations as are appropriate to the governor and to the general court.

Nothing in this section shall be interpreted to derogate from any existing common law or statutory right or remedy against damage to the environment.

In any action at law or suit in equity brought by the attorney general in any court of the commonwealth involving alleged damage to the environment, whether or not a temporary restraining order or preliminary injunction is sought or granted, after a representation by the attorney general by affidavit that delay in the trial on the merits would prevent the attainment of a full and complete remedy to the alleged damage to the environment, the court, upon finding that the facts alleged in said affidavit are true, shall place said action or suit on the advanced section of the trial list in said court with such order of priority over other cases on said advanced section as the court shall deem appropriate.

Added by St.1972, c. 781, § 1. Amended by St.1973, c. 162; St.1973, c. 283; St.1973, c. 989, § 3.

CHAPTER 13

DEPARTMENT OF CIVIL SERVICE AND REGISTRATION

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9. Boards subsequently mentioned to serve in division; offices.
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9B. Boards of registration; conflicting interests of public or lay members restricted; delegation of duties to single members; policy matters; definitions.

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BOARD OF REGISTRATION OF SOCIAL WORKERS

80. Membership; appointment; qualifications.
81. Term.
82. Removal of member for cause; right to hearing; vacancy.
83. Compensation.
84. Meetings; election of officers; regular and additional meetings; license; fees; powers and duties.

DIVISION OF REGISTRATION

§ 8. Director; duties; compensation; appointment of successor

There shall be a division of registration under the supervision of a director, to be known as the director of registration. Said director shall receive such salary, not exceeding sixteen thousand and ninety-five dollars, as the governor may determine, and shall devote his full time during business hours to the duties of his office. Upon the expiration of the term of office of a director, his successor shall be appointed by the governor for a term coterminous with that of the governor.

Amended by St.1934, c. 329; St.1946, c. 591, § 13; St.1948, c. 601, § 1; St.1949, c. 787; St.1952, c. 627, § 1; St.1955, c. 730, § 11; St.1963, c. 801, § 15; St.1967, c. 844, § 7; St.1969, c. 704, § 18; St.1969, c. 766, § 13; St. 1971, c. 116, § 13; St.1972, c. 300, § 12; St.1973, c. 426, § 13; St.1974, c. 422, § 13; St.1977, c. 234, §§ 34 to 36; St.1977, c. 872, §§ 28 to 30.

§ 9. Boards subsequently mentioned to serve in division; offices

The various boards of registration and examination hereafter mentioned in this chapter shall serve in the division of registration and shall establish their offices in the state house within the spaces already or hereafter assigned to the director of registration.

§ 9A. Rules and regulations governing examinations

The director of registration, subject to the approval of the governor and council, may make such rules and regulations governing the conduct of written and oral examinations by the several boards of registration and examination aforesaid as shall tend to standardize procedure and protect the commonwealth and applicants for registration against fraud; provided, that nothing in this section shall prevent any such board from adopting under authority of other provisions of law specific rules and regulations which are not in conflict with the rules and regulations authorized by this section.

Added by St.1945, c. 376.

§ 9B. Boards of registration; conflicting interests of public or lay members restricted; delegation of duties to single members; policy matters; definitions

(*a*) A public member or a lay member of any board shall not be, nor shall he have been within the period of five years immediately preceding his appointment, any of the following:

(1) An employer, or an officer, director, or substantially full-time representative of an employer or group of employers, of any licentiate of such board, except that this shall not preclude the appointment of a person who maintains infrequent employer status with such licentiate, or maintains a client, patient, or customer relationship with any such licentiate which does not constitute more than two per cent of the practice or business of the licentiate.

(2) A person maintaining a contractual relationship with a licentiate of such board, which would constitute more than two per cent of the practice or business of any such licentiate, or an officer, director, or substantially full-time representative of such person or group of persons.

(3) An employee of any licentiate of such board, or a representative of such employee, except that this shall not preclude the appointment of a person who maintains an infrequent employee relationship or a person rendering professional or related services to a licentiate if such employment or service does not constitute more than two per cent of the employment or practice of the member of the board.

(4) A spouse, parent, grandparent, step-mother, step-father, step-son, step-daughter, child, grandchild, brother, sister, half-brother, half-sister, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, sister-in-law, niece, nephew, uncle, aunt, of a licentiate of such board.

(*b*) A public member, or a lay member, shall not have been engaged at any time within five years immediately preceding his appointment in pursuits which lie within the field of the industry or profession regulated by the board of which he is a member, nor shall he engage in any such pursuits during his term of office.

(*c*) If any board shall as a part of its functions delegate any duty or responsibility to be performed by a single member of such board, such delegation shall not be made solely to any public member or any lay member of the board in any of the following instances:

(1) The actual preparation of, the administration of, and the grading of, examinations.

(2) The inspection or investigation of licentiates, the manner or method of practice or doing business, or their place of practice or business.

(*d*) Nothing in this section shall be construed as precluding a public member or a lay member from participating in the formation of policy relating to the scope of the activities set forth in subdivisions (1) and (2) of paragraph (*c*) of this section or in the approval, disapproval or modification of the action of its individual members, nor preclude such member from participating as a member of a subcommittee consisting of more than one member of the board in the performance of any duty.

(*e*) "Board", as used in this section, includes a board, commission, examining committee, or other similarly constituted body exercising powers under this chapter. "Licentiate" as used in this section means any person authorized by a license, certificate, registration, or other means to engage in a business or profession regulated by this chapter.

Added by St.1971, c. 1099, § 1.

BOARD OF REGISTRATION IN MEDICINE

§ 10. Board; membership; appointment; term; meetings; expenses; rules and regulations

There shall be a board of registration in medicine, in this and the following section called the board, consisting of seven persons appointed by the governor, who shall be residents of the commonwealth, five of whom shall be physicians registered under section two of chapter one hundred and twelve, or corresponding provisions of earlier laws, and two of whom shall be representatives of the public, subject to the provisions of section nine B. Each member of the board shall serve for a term of three years.

No member shall be appointed to more than two consecutive full terms; provided, however, a member appointed for less than a full term may serve two full terms in addition to such part of a full term, and a former member shall again be eligible for appointment after a lapse of one or more years. Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office after being given a written statement of the charges against him and sufficient opportunity to be heard thereon. The board shall elect from its members a chairman, vice-chairman and secretary who shall serve for one year and until their successors are appointed and qualified. The board shall meet at least once a month or more often upon the call of the chairman at such times and places as the chairman shall designate.

Members of the board shall, subject to appropriation, be paid thirty-five dollars for each day or part thereof spent in performing their duties, and shall receive their necessary traveling and other expenses while engaged in the business of the board, provided that the amount for expenses shall not be more than twenty dollars per day, except for traveling expense which shall not be more than eight cents per mile.

The board shall adopt, amend, and rescind such rules and regulations as it deems necessary to carry out the provisions of this chapter; may appoint legal counsel and such assistants as may be required; may make contracts and arrangements for the performance of administrative and similar services required, or appropriate, in the performance of the duties of the board; and may adopt and publish rules of procedure and other regulations not inconsistent with other provisions of the General Laws.

Amended by St.1932, c. 8; St.1939, c. 36; St.1960, c. 188; St.1971, c. 1099, § 2; St.1975, c. 362, § 1; St.1979, c. 58, § 1.

§ 11. Meetings; officers; bond; salaries and expenses

Said board shall hold regular meetings on the second Tuesdays of March, July and November in each year, and additional meetings at such times and places as it may determine. At the regular meeting in July, it shall organize by the choice of a chairman and secretary, who shall hold their offices for one year. The secretary shall give bond to the state treasurer in the sum of five thousand dollars, with sufficient sureties to be approved by the governor and council, for the faithful performance of his official duties. There shall be paid by the commonwealth to the secretary of the board a salary of fifty-six hundred and twenty-five dollars, to the chairman of the board a salary of twelve hundred and fifty dollars and to each of the other members thereof a salary of one thousand dollars, and to each member thereof his necessary traveling expenses actually incurred in attending the meetings of the board.

Amended by St.1937, c. 379; St.1953, c. 529; St.1955, c. 730, § 12; St.1963, c. 801, § 16.

BOARD OF REGISTRATION IN PODIATRY

§ 12A. Board; appointment; successors; term

There shall be a board of registration in podiatry, to be appointed by the governor, in this and in the following two sections called the board, consisting of five members, citizens of the commonwealth, three of whom shall have had at least seven years of practice in podiatry in this commonwealth. The fourth member shall be a registered physician who shall have had at least seven years of practice in medicine in this commonwealth. The fifth member shall be a representative of the public, subject to the provisions of section nine B. No member of the board shall be connected in any way with a school of podiatry or be financially interested in any manufacturing, wholesale or retail business, pertaining to podiatry in any form whatsoever.

As the term of a member expires, his successor shall be appointed by the governor, to serve for five years.

Added by St.1937, c. 425, § 1. Amended by St.1952, c. 73; St.1970, c. 443, § 2; St.1971, c. 1099, § 3.

§ 12B. Meetings; officers; quorum

The board shall annually meet in the month of October at such time and place as it shall determine, and shall organize by electing a chairman and secretary, who shall be members of the board, and who shall hold their respective offices for one year. The board shall hold at least six additional meetings at such times and places as it shall determine or upon call of the chairman. Three members of the board shall constitute a quorum for the transaction of business.

Added by St.1937, c. 425, § 1. Amended by St.1950, c. 315.

§ 12C. Compensation and expenses; limitation

There shall be paid by the commonwealth to the secretary of the board a salary of five hundred dollars, and his necessary expenses incurred in the discharge of his official duties, and to each of the other members thereof a salary of two hundred and fifty dollars, and his necessary expenses so incurred; provided, that the salaries and expenses of the members of the board shall not be in excess of the receipts for registration.

Added by St.1937, c. 425, § 1. Amended by St.1955, c. 730, § 13; St.1963, c. 801, § 17; St.1969, c. 508.

BOARD OF REGISTRATION IN NURSING

§ 13. Members; number; qualifications; appointment; term

There shall be a board of registration in nursing, in this section and in sections fourteen to fifteen D, inclusive, called the board, consisting of eight members, each a resident of the commonwealth, to be appointed by the governor. One member of the board shall be a representative of the public, subject to the provisions of section nine B. Five members of the board shall be registered nurses, each a graduate of a different school for nurses duly approved in accordance with chapter one hundred and twelve, who at the time of appointment shall have been registered in the commonwealth to practice and shall have been actively engaged in practice as a registered nurse for at least eight years and one of whom shall be familiar with independent nursing practice. At the time of appointment, one of said registered nurses shall be on the teaching staff of a collegiate school for nurses, one shall be on the teaching staff of a diploma school for nurses, one shall be on the nursing service administration staff of a hospital duly licensed in accordance with chapter one hundred and eleven, one shall be practicing in the field of public health and one on the teaching staff of a practical-vocational school of nursing; provided, however, that the membership of any such member shall terminate if such member ceases to be so employed, and the governor shall appoint a person to fill such vacancy as herein provided. Two members of the board shall be licensed practical nurses who at the time of their appointment shall have been licensed in the commonwealth, and shall have been actually engaged as licensed practical nurses for at least eight years and who shall be graduates of a school for practical nurses; provided, however, that the membership of any such member shall terminate if such member ceases to be so employed, and the governor shall appoint a person to fill such vacancy as herein provided. As the term of office of a member expires, his successor shall be appointed for a term of six years, but no member shall be appointed for two successive terms.

Amended by St.1941, c. 620, § 2; St.1953, c. 350, § 1; St.1960, c. 693, § 1; St.1961, c. 512; St.1969, c. 375; St.1971, c. 1099, § 4; St.1976, c. 436, § 1; St.1977, c. 111; St.1979, c. 348, §§ 1, 2.

§ 14. Meetings; officers; executive secretary

The board shall hold regular meetings in January, April and October at the office of the board on dates specified by it, and may hold additional meetings at such times and places as it may determine. At the regular meeting in October it shall organize by electing a chairman, who shall hold office for one year. The board shall appoint an executive secretary who at the time of appointment shall hold a bachelor's degree, shall have been registered to practice as a registered nurse in the commonwealth for at least eight years, shall have been actively engaged in such practice for at least eight years, during at least five years of which he shall have served on the teaching or administrative staff of a school for nurses duly approved in accordance with chapter one hundred and twelve, and who shall continue to be so registered so long as he shall hold the said office. He shall not be a member of the board, shall not be subject to chapter thirty-one, shall perform under the direct supervision of the board such duties as the board shall from time to time designate, and shall receive such salary as may be fixed in accordance with chapter thirty.

Amended by St.1941, c. 620, § 2; St.1960, c. 693, § 2; St.1964, c. 22.

§ 14A. Registrar of nurses and practical nurses; qualifications; appointment; duties

There shall be an assistant to the secretary of the board, called the registrar of nurses and practical nurses, who shall have been a registered nurse for at least five years prior to his appointment and who, subject to chapter thirty-one, shall be appointed by the director of registration, with the approval of the board. Said registrar shall be under the supervision of said secretary, shall have charge of the re-registration of nurses and the re-licensing of practical nurses and shall perform such other duties in connection with the registration of nurses and licensing of practical nurses as he may direct.

Added by St.1941, c. 620, § 2. Amended by St.1953, c. 350, § 2.

§ 15. Board; members; compensation and expenses

Each member of the board shall receive as compensation five hundred dollars a year for the performance of his duties, and also his necessary traveling expenses actually incurred in attending the meetings of the board, but subject to section fifteen D.

Amended by St.1941, c. 620, § 2; St.1955, c. 730, § 14; St.1960, c. 693, § 3; St.1963, c. 801, § 18.

§ 15D. Compensation and expense limit

The compensation and traveling expenses of the members of the board and the incidental expenses necessarily incurred by the board and by any member thereof paid by the commonwealth, in any year shall not exceed the receipts from registration and licensing paid to the commonwealth by the board.

Added by St.1941, c. 620, § 2. Amended by St.1960, c. 693, § 7.

BOARD OF REGISTRATION IN OPTOMETRY

§ 16. Board; membership; appointment; term; qualifications

There shall be a board of registration in optometry, in the two following sections called the board, consisting of five members, citizens of the commonwealth, four of whom shall have been actually engaged in the practice of optometry as defined in section sixty-six of chapter one hundred and twelve for the five years next preceding their appointment, and one of whom shall be a representative of the public, subject to the provisions of section nine B. One member shall annually, in September, be appointed by the governor, for five years. No member thereof shall be a stockholder of any school of optometry, a member of the faculty or on the board of trustees thereof, or financially interested in a manufacturing or wholesale optical business.

Amended by St.1971, c. 1099, § 5.

§ 17. Board meetings; officers; secretary's bond

The board shall annually meet in the month of October at such time and place as it shall determine, and shall organize by electing a chairman and secretary, who shall be members of the board, and who shall hold their respective offices for one year. The board shall hold additional meetings at such times and places as it shall determine, or upon call of the chairman. The secretary shall give to the state treasurer a bond, with sufficient sureties to be approved by the governor and council, for the faithful performance of his duties.

Amended by St.1934, c. 339, § 1.

§ 18. Salaries and expenses

There shall be paid by the commonwealth to the secretary of the board a salary of seven hundred and fifty dollars, and to each other member thereof a salary of five hundred and seventy-five dollars, and to each member thereof his necessary traveling expenses actually incurred in attending the meetings of the board and such other expenses of the board as are incurred under section sixteen or seventeen or under sections sixty-six to seventy-three, inclusive, of chapter one hundred and twelve.

Amended by St.1955, c. 730, § 16; St.1958, c. 494, § 1; St.1963, c. 801, § 19.

BOARD OF DENTAL EXAMINERS

§ 19. Board; membership; qualifications; appointment; term; advisors

There shall be a board of registration in dentistry in the following two sections called the board, consisting of eight persons, each of whom shall be a legal resident of the commonwealth, to be appointed by the governor, six of whom shall be graduates of a reputable dental college and be reputable dentists who have maintained a license to practice dentistry in the commonwealth for the eight years next preceding his appointment, one of whom shall be a representative of the public, subject to the provisions of section nine B, one of whom shall be a graduate of a reputable school of dental hygiene and a reputable dental hygienist who has maintained a license to practice dental hygiene in the commonwealth for the five years next preceding his appointment. No more than one member of the board who is a dentist may be a full time member of the faculty or a trustee of any institution engaged in educating dentists or having power to confer degrees in dentistry. The governor shall appoint annually in April, for a term of five years, a successor to those members of the board whose terms are expiring in that month. No member shall serve more than two full terms.

There shall be two advisors to the board who shall be dental assistants. One dental assistant shall be appointed an advisor annually, in April, by the governor for a two year term. Any vacancy in the position of advisor shall be filled by the governor for the unexpired term. Advisors shall provide advice and consultation to the board within their area of expertise, and the board shall submit to the advisors for review and comment, at least sixty days prior to its publication as a proposal, any proposed rule or regulation, except emergency rules and regulations adopted under the provisions of clause (3) of section two of chapter thirty A, which would affect the activities of dental assistants.

Amended by St.1971, c. 1099, § 6; St.1973, c. 707; St.1977, c. 757, § 1.

§ 20. Board meetings; officers

The board shall hold at least two regular meetings in each year in Boston, and shall annually choose from its own number a chairman and a secretary.

Amended by St.1946, c. 550, § 1; St.1947, c. 417.

§ 21. Salaries and expenses; accounts open to public

There shall be paid by the commonwealth to the chairman of the board a salary of twelve hundred and fifty dollars, to the secretary thereof eighteen hundred and seventy-five dollars, and to the other members thereof one thousand dollars each, and to each member thereof his necessary traveling expenses actually incurred in attending meetings of the board. The board shall keep a record of all money received and expenses incurred by it, and a duplicate thereof shall be open to public inspection in the office of the comptroller.

Amended by St.1955, c. 730, § 17; St.1963, c. 801, § 20.

BOARD OF REGISTRATION IN PHARMACY

§ 22. Board; membership; qualifications; appointment; term

There shall be a board of registration in pharmacy, in the three following sections called the board, consisting of five persons, who shall be residents of the commonwealth. Three of these persons shall be registered pharmacists and shall have had at least ten consecutive years of practical experience in the compounding and dispensing of physicians' prescriptions, and shall actually be engaged in the drug business. One person shall be a registered pharmacist and shall have had at least ten years of experience in the compounding and dispensing of physicians' prescriptions, and shall actually be engaged as a pharmacist in a public, non-profit hospital in the commonwealth. One member shall be a representative of the public, subject to the provisions of section nine B. No more than one member shall reside in the same senatorial district. One member shall annually in November be appointed by the governor, for five years from December first following.

Amended by St.1971, c. 1099, § 7.

§ 23. Meetings; officers; secretary's bond

The board shall meet on the first Tuesday of December in each year at such time and place as it may determine, and shall organize by electing a president and secretary, who shall be members of the board, and shall hold their offices for one year. The secretary shall give to the state treasurer a bond, with sufficient sureties to be approved by the governor and council, for the faithful performance of his official duties. The board shall annually hold regular meetings on the first Tuesdays of January, May and October, and additional meetings at such times and places as it shall determine.

Amended by St.1952, c. 625, § 1; St.1953, c. 280, § 1.

§ 24. Salaries and expenses

There shall be paid by the commonwealth to the secretary of the board a salary of twenty-two hundred and fifty dollars, to each of the other members thereof a salary of one thousand and fifty dollars, and to each member thereof his necessary traveling expenses actually incurred in attending the meetings of the board.

Amended by St.1952, c. 625, § 2; St.1953, c. 280, § 2; St.1963, c. 801, § 21.

§ 25. Agents; expenses; duties

The board shall appoint not more than six agents who shall be allowed necessary traveling expenses. They shall inspect drug stores and all other places of business wherein drugs, medicines, patent medicines, medical preparations and medical supplies of any kind are sold or distributed, and shall make a report of their doings pertaining thereto to the board, and shall report all violations of the laws relating to pharmacy and the retail drug business and all violations of the rules and regulations of the board. As directed by the board, they shall file criminal complaints against all violators of such laws, rules or regulations.

Amended by St.1941, c. 596, § 6; St.1951, c. 577; St.1973, c. 1124.

BOARD OF REGISTRATION IN VETERINARY MEDICINE

§ 26. Membership; qualifications; restrictions; term

There shall be a board of registration in veterinary medicine, in sections twenty-seven and twenty-eight called the board, consisting of four veterinarians, and one representative of the public, subject to the provisions of section nine B. Each member of said board shall be a legal resident of the commonwealth. Each veterinarian member of said board shall be licensed to practice veterinary medicine in the commonwealth, a graduate of a school or college teaching veterinary medicine and approved by the approving authority, and shall have had at least five years' experience in the active practice of veterinary medicine, surgery and dentistry prior to his appointment. No member shall be a member of any faculty in any institution having the power to confer degrees in veterinary medicine. One member thereof shall annually before December first be appointed by the governor, for five years from January first following. No veterinarian member appointed to a full five year term under this section shall be reappointed to succeed himself.

Amended by St.1950, c. 192; St.1958, c. 533, § 1; St.1971, c. 1099, § 8; St.1974, c. 810, § 1.

§ 27. Meetings; officers

The members of the board shall meet in February of each year, at such time and place as they shall determine, and shall immediately organize by electing a chairman and a secretary, who shall hold their respective offices for one year. The board shall hold regular meetings at such times and places as it may determine. The secretary shall keep suitable books in which shall be an accurate record of all the proceedings of the board, and shall perform such duties as the rules and regulations of said board shall direct.

Amended by St.1958, c. 533, § 2; St.1974, c. 810, § 2.

§ 28. Salaries and expenses; limitations

There shall be paid by the commonwealth to the secretary a salary of fifteen hundred dollars and his necessary traveling and contingent expenses, not exceeding three hundred dollars, actually incurred in attending to the necessary work of the board, and to each of the other members of the board a salary of two hundred and fifty dollars and his necessary traveling and contingent expenses actually incurred in attending the meetings thereof.

Amended by St.1948, c. 647; St.1963, c. 801, § 22; St.1974, c. 810, § 3.

BOARD OF REGISTRATION IN EMBALMING AND FUNERAL DIRECTING

§ 29. Board; membership; appointment; term

There shall be a board of registration in embalming and funeral directing, in this and the following two sections called the board, consisting of five members, citizens and residents of the commonwealth, four of whom shall have had at least five years' practical experience in embalming dead human bodies and in funeral directing. One member shall be a representative of the public, subject to the provisions of section nine B. Each member of the board shall be appointed by the governor for a term of five years. Each member shall continue to serve until the qualification of his successor. The governor may also fill any vacancy in the board for the unexpired term.

In making such appointments, one member shall be a resident of Worcester county; one a resident of the district composed of Berkshire, Hampden, Franklin and Hampshire counties; one a resident of the district composed of Norfolk, Plymouth, Bristol, Dukes, Barnstable and Nantucket counties; one a resident of the district composed of Suffolk county and the cities of Everett, Malden, Medford, Cambridge and Somerville; and one a resident of the district composed of Essex county and Middlesex county, not including the cities of Everett, Malden, Medford, Cambridge and Somerville.

Not more than three members of said board shall be members of the same political party.

Amended by St.1936, c. 407, § 1; St.1954, c. 653, § 1; St.1959, c. 276; St.1971, c. 1099, § 9.

§ 30. Meetings; officers; secretary's bond

The board shall hold regular meetings on the first Tuesday of each month, and such additional meetings at such times and places as it may determine. At the regular meeting in October, it shall organize by the choice of a chairman and secretary, who shall be members thereof, and shall hold such offices for one year. The secretary shall give to the state treasurer a bond, with such sureties as shall be approved by the governor and council, for the faithful discharge of his duties.

Amended by St.1954, c. 653, § 1.

§ 31. Salaries and expenses; limitations

There shall be paid by the commonwealth to the chairman of said board the sum of twenty-five hundred dollars annually, to the secretary of said board the sum of eighteen hundred and seventy-five dollars, and to each of the other members of said board the sum of twelve hundred and fifty dollars, and to all members of the board their necessary traveling and other expenses actually expended in attending meetings thereof. Said board may expend any sum not exceeding five hundred dollars annually for purposes of instruction and dissemination of new and useful knowledge among and for the benefit of registered embalmers and funeral directors; provided, that such salaries and expenses shall not be in excess of the receipts for registration and renewals thereof received by the state treasurer from the board.

Amended by St.1936, c. 407, § 2; St.1946, c. 591, § 14; St.1954, c. 653, § 1; St.1963, c. 801, § 23.

BOARD OF STATE EXAMINERS OF PLUMBERS

§ 36. Board; membership; appointment; term; chairman; executive secretary; expenses

There shall be a board of state examiners of plumbers and gas fitters, in sections thirty-seven and thirty-eight called the examiners, consisting of nine members, citizens of the commonwealth, of whom one shall have had at least ten years practical experience as a master plumber, one shall be a journeyman plumber with at least ten years practical experience, who is a wage earner, one shall be a sanitary engineer, one shall be a master gas fitter with at least ten years practical experience in the field of undiluted liquefied petroleum gas and natural gas, one shall be a journeyman gas fitter with at least ten years practical experience, who is a wage earner, one shall be a master or journeyman gas fitter with at least ten years practical experience in the design and installation of liquefied petroleum gas systems, one shall be the commissioner of public health or his designee, one shall be the commissioner of public safety or his designee, one shall be a representative of the public subject to the provisions of section nine B. As the term of office of a member expires, his successor shall be appointed by the governor to serve for three years. The governor shall designate the chairman of the board and may at any time change such designation. The governor shall designate an appointee as the master plumber, the journeyman plumber, the master gas fitter, the journeyman gas fitter, the gas fitter competent in liquefied petroleum gas systems, the sanitary engineer or the public member of the board.

Amended by St.1941, c. 596, § 7; St.1945, c. 517, § 1; St.1951, c. 691, § 2; St.1963, c. 191; St.1971, c. 1099, § 12; St.1975, c. 706, § 11; St.1977, c. 843, § 1.

§ 37. Meetings

The examiners shall hold regular meetings each month at such times and places as they may designate.

Amended by St.1964, c. 366; St.1966, c. 102.

§ 38. Salaries and expenses; clerical assistance

There shall be paid by the commonwealth to the chairman of the examiners a salary of seven hundred and fifty dollars and to each other member thereof a salary of five hundred dollars, and to each member thereof his necessary traveling expenses actually incurred in attending meetings of the examiners. The division of registration shall furnish the examiners with such clerical assistance as may be necessary.

Amended by St.1955, c. 730, § 19; St.1963, c. 801, § 25.

BOARD OF REGISTRATION OF DISPENSING OPTICIANS

§ 48. Board; membership; appointment; term

There shall be a board of registration of dispensing opticians to be appointed by the governor, with the advice and consent of the council. The board shall consist of five members, citizens of the commonwealth, four of whom shall have been principally engaged as dispensing opticians, as defined in section seventy-three C of chapter one hundred and twelve, for a period of not less than ten years and none of whom shall be in any way connected with any ophthalmic school or college. The fifth member shall be a representative of the public, subject to the provisions of section nine B. One member shall annually in January be appointed by the governor, for a term of five years.

Added by St.1955, c. 688, § 1. Amended by St.1971, c. 1099, § 15.

§ 49. Meetings; officers; secretary's bond

The board shall annually meet in the month of October at such time and places as it shall determine, and shall organize by electing a chairman and secretary who shall be members of the board and who shall hold their respective offices for a period of one year. The board shall hold additional meetings at such time and places as it shall determine or upon call of the chairman. The secretary of the board shall give the state treasurer a bond with sufficient sureties, to be approved by the governor and council, for the faithful performance of his duties.

Added by St.1955, c. 688, § 1.

§ 50. Salaries and expenses

There shall be paid annually by the commonwealth to the secretary of the board a salary of three hundred and seventy-five dollars and to each other member thereof an annual salary of one hundred and twenty-five dollars and to each member the necessary traveling expenses actually incurred in attending the meetings of the board and such other expenses as shall be incurred in the discharge of his duties.

Added by St.1955, c. 688, § 1. Amended by St.1963, c. 801, § 29.

BOARD OF REGISTRATION OF SANITARIANS

§ 51. Board; appointment; qualifications; term

There shall be a board of registration of sanitarians, hereafter in this section and in sections fifty-two and fifty-three referred to as the board, consisting of seven members to be appointed by the governor, of whom one shall be an employee of the department of public health, one shall be an educator in the field of sanitary science, four of whom shall be registered sanitarians, with at least five years' experience in the field of environmental sanitation, and one of whom shall be a representative of the public, subject to the provisions of section nine B. Each member shall serve for a term of three years.

Added by St.1957, c. 673, § 1. Amended by St.1971, c. 1099, § 16.

§ 52. Meetings; organization; rules and regulations

The board shall meet annually in the month of December at such time and place as it shall determine, and shall organize and choose from their own members a chairman, a vice chairman and a secretary, who shall hold their respective offices until the next annual meeting. The board shall hold such other meetings at such times and places as it shall determine. It may adopt such rules and regulations, not inconsistent with law, as it may deem necessary in the performance of its duties.

Added by St.1957, c. 673, § 1.

§ 53. Compensation and expenses; appointment of employees

Each member of the board, other than the employee of the department of public health, shall receive from the commonwealth twelve dollars and fifty cents for each day or portion thereof spent in attending board meetings; and each member shall be paid the necessary traveling expenses actually incurred by him in attending said meetings; provided, that such compensation and expenses shall not in any one year exceed the receipts from registrations and licenses paid to the commonwealth by the board. The board may appoint such employees as may be necessary to carry out its duties and may expend therefor such sums as may be appropriated.

Added by St.1957, c. 673, § 1. Amended by St.1963, c. 801, § 30.

BOARD OF REGISTRATION OF ELECTROLOGISTS

§ 58. Establishment; membership; qualifications; appointment

There shall be a board of registration of electrologists consisting of five persons, residents of the commonwealth, of whom three shall be licensed electrologists who have been engaged in the practice of electrolysis in the commonwealth for at least five years, one of whom shall be a physician registered under the laws of the commonwealth, and one of whom shall be a representative of the public, subject to the provisions of section nine B. No member of the board, while in office, shall have any financial interest, direct or indirect, in the manufacture or sale of equipment and supplies used in the practice of electrolysis or shall engage in the teaching of electrolysis. A member of said board shall be appointed in January of each year by the governor, for a term of three years from the first day of the following February.

Added by St.1958, c. 625, § 1. Amended by St.1971, c. 1099, § 17.

§ 59. Meetings

The members of said board shall meet in February in each year at such time or place as they shall determine, and shall organize by electing from its own members a chairman and a secretary, who shall hold their respective offices for one year. The board shall hold regular meetings in February, May, August and November, and such additional meetings as it may determine, at such times and places as may be agreed upon by the members.

Added by St.1958, c. 625, § 1.

§ 60. Compensation; traveling expenses

There shall be paid by the commonwealth to the secretary of said board a salary of six hundred and twenty-five dollars and his necessary traveling expenses actually incurred in attending to the necessary work of the board, and to each of the other members of the board a salary of two hundred and fifty dollars, and his necessary traveling expenses actually incurred in attending the meetings thereof, and such other expenses of the board as are incurred under section fifty-nine and under sections eighty-seven FFF to eighty-seven OOO, inclusive, of chapter one hundred and twelve.

Added by St.1958, c. 625, § 1. Amended by St.1960, c. 288; St.1963, c. 801, § 31.

BOARD OF REGISTRATION OF CHIROPRACTORS

§ 64. Establishment; membership; qualifications; appointment

There shall be a board of registration of chiropractors, in this section and in section sixty-five and sixty-six called the board, consisting of seven members to be appointed by the governor, who shall be residents of the commonwealth, four of whom shall be registered chiropractors, two of whom shall be registered physicians, and one of whom shall be a representative of the public, subject to the provisions of section nine B. Upon the expiration of the term of any member of the board, his successor shall be appointed in like manner for a term of three years. No more than two members of the board shall be graduates of the same legally chartered chiropractic school or college. If one or both physicians so appointed to serve on said board refuses to serve, a chiropractor, qualified as hereinbefore provided, may be appointed in his stead.

Added by St.1966, c. 409, § 1. Amended by St.1971, c. 1099, § 19.

§ 65. Meetings

The board shall hold at least two regular meetings in each year for the purpose of examining applicants for registration and the transaction of other business. At its first regular meeting in each year the board shall choose from their own members a chairman and a secretary.

Added by St.1966, c. 409, § 1.

§ 66. Remittance of fees; compensation and expenses of members

All fees received by the secretary of the board and not returned to the applicant shall be paid monthly to the state treasurer. Each member of the board shall receive from the commonwealth fifteen dollars for each day or portion thereof spent in the performance of his official duties. Each member shall be paid the necessary traveling and other expenses actually incurred by him in the performance of said duties.

Added by St.1966, c. 409, § 1. Amended by St.1968, c. 573.

BOARD OF CERTIFICATION OF OPERATORS OF WASTE WATER TREATMENT FACILITIES

§ 66A. Establishment; membership; appointment; expenses; term of office; vacancies; qualifications of operators; examinations; certificates of competency

There shall be a board of certification of operators of waste water treatment facilities to insure the proper management, operation and maintenance of waste water systems. The board shall consist of the chairman of the water resources commission or his designee, who shall be designated chairman, the commissioner of public health, or his designee, and seven members to be appointed by the governor. Of the appointive members of the board, one shall be a faculty member of an accredited school of engineering, one a registered professional engineer engaged in the practice of sanitary engineering, one a member of the Associated Industries of Massachusetts, one a member of the Massachusetts State Labor Council, AFL–CIO, one to be appointed from a list of qualified operators of waste water treatment facilities in the commonwealth which has been recommended by the executive committee of the New England Water Pollution Control Association, one to be appointed from a list of qualified persons recommended by the Massachusetts Waste Water Treatment Plant Operators Association, and one who shall be a representative of the public, subject to the provisions of section nine B. Each appointive member of the board shall receive his necessary travelling expenses actually incurred in the discharge of his official duties; provided that the expenses of the members of the board, and the expenses of the board, including those of such employees as it may appoint, shall not in any one year exceed its receipts. Each member shall serve for a term of four years. As the term of office of a member of the board expires, his successor shall be appointed in like manner for a term of four years. Any vacancy shall be filled by the governor for the unexpired term. Said board shall meet at the call of the chairman and shall by rule establish the minimum qualifications which must be possessed by operators of waste water treatment facilities. Said board may prepare and conduct examinations, maintain records and may issue and renew, or suspend or revoke, after hearing and for cause, certificates of competency. It may adopt such further rules and regulations not inconsistent with the law as it may deem necessary in the performance of its duties.

Added by St.1970, c. 781, § 1. Amended by St.1971, c. 1099, § 20.

BOARD OF CERTIFICATION OF OPERATORS OF DRINKING WATER SUPPLY FACILITIES

§ 66B. Establishment; membership; appointment; qualifications; term of office; vacancies; expenses; meetings; powers and duties; rules and regulations

There shall be a board of certification of operators of drinking water supply facilities to insure the proper management, operation and maintenance of public water supply systems. The board shall consist of the commissioner of environmental quality engineering or his designee, who shall be chairman, the commissioner of public health or his designee, the chairman of the water resources commission or his designee and four members to be appointed by the governor. Of the appointive members of the board, one shall be a registered professional engineer engaged in the practice of sanitary engineering, one a member of the Massachusetts Labor Organization, one shall be appointed from a list of qualified operators of water supply facilities in the commonwealth which has been recommended by the executive committee of the New England Water Works Association, and the remaining member shall be appointed from a list of qualified persons recommended by the executive board of the Massachusetts Water

Works Association. Each appointive member of the board shall receive his necessary traveling expenses actually incurred in the discharge of his official duties, provided that the expenses of the members of the board, and the expenses of the board, including those of such employees as it may appoint, shall not in any one year exceed its receipts. As the term of office of a member of the board expires, his successor shall be appointed in like manner for a term of four years. Said board shall meet at the call of the chairman and shall by rule establish the minimum qualification which must be possessed by operators of drinking water supply facilities. Said board may prepare and conduct examinations, maintain records and may issue and renew, or suspend or revoke, after hearing and for cause, certification of competency. It may adopt such further rules and regulations not inconsistent with the law as it may deem necessary in the performance of its duties.

Added by St.1971, c. 942, § 1. Amended by St.1975, c. 706, § 12.

BOARD OF CERTIFICATION OF HEALTH OFFICERS

§ 70. Establishment; membership; appointment; qualifications; term of office

There shall be a board of certification of health officers, in this section and sections seventy-one and seventy-two called the board, consisting of nine members to be appointed by the governor, one of whom shall be an educator in the field of public health administration, one of whom shall be a member of the department of public health in an administrative capacity, five of whom shall be certified local health officers with at least five years experience in public health administration and who shall provide broad geographical representation to the board, one of whom shall be a member of a nongovernmental voluntary health agency with at least five years of public health administrative experience, and one of whom shall be a representative of the public, subject to the provisions of section nine B. Each member shall serve for a term of four years.

Added by St.1970, c. 521, § 1. Amended by St.1971, c. 1099, § 22.

§ 71. Meetings; officers; rules and regulations

The board shall meet annually in the month of December at such time and place as it shall determine and it shall organize and choose from its own members a chairman, a vice chairman and a secretary who shall hold their respective offices until the next annual meeting. The board shall hold such other meetings at such times and places as it shall determine. It may adopt such rules and regulations not inconsistent with law as it may deem necessary in the performance of its duties.

Added by St.1970, c. 521, § 1.

§ 72. Compensation and expenses; employees

Each member of the board other than the employee of the department of public health shall receive from the commonwealth ten dollars for each day or portion thereof spent in attending board meetings and each member shall be paid the necessary travelling expenses actually incurred by him in attending said meetings, provided that such compensation and expenses shall not in one year exceed the receipts from the registrations and licenses. The board may appoint such employees as may be necessary to carry out its duties and may expend therefor such sums as may be appropriated.

Added by St.1970, c. 521, § 1.

BOARD OF REGISTRATION OF NURSING HOME ADMINISTRATORS

§ 73. Establishment; membership; appointment; vacancies; removal

There shall be a board of nursing home administrators, in this section and in sections seventy-four and seventy-five called the board, consisting of the commissioner of public health or his designee, the commissioner of public welfare or his designee, the secretary of elder affairs or his designee, and nine members appointed by the governor. One member shall be an educator actively engaged in the field of health care administration, one shall be a medical doctor or a registered nurse, one shall be a hospital administrator actively engaged in long term health care administration, and one shall be a representative of the public, subject to the provisions of section nine B. Five members shall be nursing home administrators who shall have been practicing for at least five years and who shall be eligible for licensure; and one of said five shall be the administrator of a nonproprietary nursing home. Not more than five members shall be administrators of nursing homes. Each appointive member of the board shall serve for a term of three years. Any vacancy shall be filled by the governor for the unexpired term. Members may be removed by the governor for cause after due notice and hearing.

Added by St.1970, c. 865, § 1. Amended by St.1971, c. 1099, § 23; St.1973, c. 1168, § 9.

§ 74. Meetings; officers; rules and regulations

The board shall hold at least two regular meetings in each year for the purpose of examining applications for registration and the transaction of other business. At its first regular meeting in each year the board shall choose from its own members a chairman and a secretary. The board shall hold such other meetings at such times and places as it shall determine. It may adopt such rules and regulations not inconsistent with law as it may deem necessary in the performance of its duties.

Added by St.1970, c. 865, § 1.

§ 75. Disposition of fees; compensation and expenses of members; employees

All fees received by the secretary of the board and not returned to the applicant shall be paid monthly to the state treasurer. Each appointed member shall receive from the commonwealth twenty-five dollars for each day or portion thereof spent in attending board meetings, and each member shall be paid the necessary traveling and other expenses actually incurred by him in attending said meetings; provided that such compensation and expenses shall not in any year exceed the receipts for registration and licenses paid to the commonwealth by the board. The board may appoint such employees as may be necessary to carry out its duties and may expend therefor such sums as may be appropriated.

Added by St.1970, c. 865, § 1.

BOARD OF REGISTRATION OF PSYCHOLOGISTS

§ 76. Membership; appointment; qualifications

There shall be a board of registration of psychologists which shall consist of five members to be appointed by the governor. Members of the board shall be residents of the commonwealth and citizens of the United States. A member of the board shall hold a doctoral degree in psychology, or in a closely related field with a major emphasis in psychology, from a recognized educational institution, and shall have been actively engaged in the practice or teaching of psychology or in psychological research for the five years next preceding his appointment. At least three members of the board shall be licensed psychologists under the provisions of sections one hundred and eighteen to one hundred and twenty-seven, inclusive, of chapter one hundred and twelve.

Added by St.1971, c. 1021, § 1.

§ 77. Term; expiration; appointment of successor

Upon the expiration of the term of a member, his successor shall be appointed for a term of five years. No member of the board who has served a full five-year term shall be reappointed to succeed himself.

Added by St.1971, c. 1021, § 1.

§ 78. Removal of member for cause; notice; right to hearing

The governor shall have the power to remove from office any member of the board for cause; but no board member may be so removed without being informed in writing at least thirty days in advance, of the reasons for his removal and of his right to a public or private hearing with counsel.

Added by St.1971, c. 1021, § 1.

§ 79. Meetings; election of officers; licenses; rules and regulations; compensation; assistants

The board shall, at its first meeting, and at each annual meeting thereafter, organize by electing from among its members a chairman, a vice-chairman, and a secretary. Such officers shall serve until their successors are elected and qualified.

The board shall hold at least two regular meetings each year; but additional meetings may be held upon call of the chairman, or the secretary, or at the written request of any two members of the board. Three members of the board shall constitute a quorum.

The board shall examine and pass upon the qualifications of applicants for licenses to practice psychology in the commonwealth and shall issue licenses to qualified applicants, but no action shall be taken with respect to the granting of a license or its revocation or suspension without the concurrence of at least three members of the board. The board shall adopt a seal which shall be affixed to all licenses issued by the board.

The board shall from time to time adopt such rules and regulations and such amendments thereof and supplements thereto as it may deem necessary.

The members of the board shall serve without compensation but each member shall be reimbursed by actual expenses reasonably incurred in the performance of his duties as a member or on behalf of the board. The board shall be empowered to hire such assistants as it may deem necessary to carry on its activities.

Added by St.1971, c. 1021, § 1.

BOARD OF REGISTRATION OF SOCIAL WORKERS

§ 80. Membership; appointment; qualifications

There shall be a board of registration of social workers hereinafter called the board, which shall consist of seven members to be appointed by the governor. Members of the board shall be residents of the commonwealth and citizens of the United States. Four of such members shall represent each of the levels of licensure provided for in section one hundred and thirty-one of chapter one hundred and twelve, except that such members constituting the first board shall be persons who are eligible for licensing as social workers. Three of said four board members shall have had two years experience working in or consulting for an agency with an executive board comprised of community members. Three members of the board shall be selected from and shall represent the general public.

Of the members required to be licensed, one shall be actually engaged in social work education, one shall be actually engaged in the independent practice of clinical social work, and one shall be an active member of an organized labor organization representing social workers. At least one licensed social work member and one member representing the general public shall be from a minority group, as defined by the federal Department of Health, Education and Welfare. At least one member representing the general public shall be a consumer of social work services. No more than four members of the board shall belong to any one political party.

Added by St.1977, c. 818, § 1.

§ 81. Term

The term of office of each member of the board shall be three years, except that of the members of the first board, two shall be appointed for terms of one year, two members for terms of two years, and three members for terms of three years. At least one member representing the general public and at least one member from a minority group, as defined by the Federal Department of Health, Education and Welfare, shall be appointed for the initial term of three full years.

Added by St.1977, c. 818, § 1.

§ 82. Removal of member for cause; right to hearing; vacancy

A member of the board may be removed from office for cause, provided that said member shall have a right to request a public hearing which shall be advertised by notification of the major social work organizations and publication of notices in the commonwealth. Upon the death, resignation or removal for cause of any member of the board, the governor, after consultation with the board, shall fill such vacancy for the remainder of that member's term.

Added by St.1977, c. 818, § 1.

§ 83. Compensation

The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performances of his duties as a member or on behalf of the board.

Added by St.1977, c. 818, § 1.

§ 84. Meetings; election of officers; regular and additional meetings; license; fees; powers and duties

The board shall, at its first meeting, and annually thereafter, organize by electing from its membership a chairman, vice-chairman, and a secretary. Such officers shall serve until their successors are elected and qualified.

The board shall hold at least two regular meetings each year, but additional meetings may be held upon the call of the chairman, or the secretary, or at a written request of any two members of the board. Four members of the board shall constitute a quorum, provided, however, that at least one of those four members shall be a member who was selected from and who represents the general public.

The board shall examine and pass upon the qualifications of applicants for license to practice social work in the commonwealth and shall issue licenses to qualified applicants but no action shall be taken with respect to the granting of a license or its revocation or suspension without the concurrence of at least four members of the board, provided, however, that at least two of those four members shall be members who were selected from and who represent the general public. The board shall adopt a seal which shall be affixed to all licenses issued by the board.

Fees shall be as established and published by the board and shall be non-refundable. Clerical staff and supportive services shall be appointed or provided under the division of registration.

The board shall have the following powers, duties and functions:

(*a*) promulgate rules and regulations that set professional standards for all licensed social workers, including, licensed, independent clinical social workers, and from time to time adopt such other rules and regulations and such amendments and supplements thereto as it may deem necessary;

(*b*) recommend to the governor and the legislature, after a public hearing which shall be advertised by notification of the major social work organizations and publication of notices in the media throughout the commonwealth, modifications and amendments to statutes regulating the licensing of social workers;

(*c*) cause examinations to be held not less than four times a year and carefully evaluate examinations to try to make them free from cultural bias and balanced in theory;

(*d*) annually publish a list of the names and addresses of persons who are licensed to practice social work;

(*e*) set fees for examinations, initial application and renewal procedures at nominal rates sufficient to cover operating expenses incurred by the board in carrying out its functions;

(*f*) establish regulations for continuing education requirements for licenses, and negotiate for a sliding scale fee for such educational requirements with the participating educational institutions. Said regulations shall not require more than two semester hours per year at an accredited educational institution as a condition for continuing registration. Should there not be any continuing education courses available at a fee that an individual applicant can afford, if the applicant meets the other conditions of licensing, the board shall issue a provisional license while continuing to negotiate to make such courses available.

The board shall cause public hearings to be held prior to setting specifications for any continuing education requirements.

The board shall appoint an educational committee consisting of seven members. It shall consist of one social worker actually engaged in the field of social work education, one actually engaged in private agency practice, one actually engaged in independent clinical social work practice and one an active member of an organized labor organization representing social workers, and three members selected from the general public. At least one licensed social worker and one member representing the general public shall be from a minority group, as defined by the federal Department of Health, Education and Welfare. At least one member representing the general public shall be a consumer of social work services. The composition of the educational committee shall represent a balance of theoretical perspectives. The board member representing social work education shall be the chairman of the educational committee. The educational committee shall make specific recommendations on an annual basis to the board concerning continuing education;

(*g*) establish a mechanism to enable consumers to file complaints against licensed social workers and investigate and take appropriate action on such complaints, providing said complaints are in writing.

Added by St.1977, c. 818, § 1.

CHAPTER 15

DEPARTMENT OF EDUCATION

Sec.
1L. School lunch program for elderly persons.
1M. Division of special education; powers and duties.
1N. Bureaus in division; appointment of directors; hearings and investigations.
1O. Regional branches of division; directors; functions.
1P. Special education advisory council; membership; term; powers and duties; reimbursement for expenses.
1Q. State advisory commission for special education; membership; reimbursement for expenses; evaluation of program and recommendations; disagreements.

DIVISION OF SPECIAL EDUCATION

15B. Library center for visually-handicapped children.

§ 1L. School lunch program for elderly persons

The school committee of any city or town designated by the secretary of elder affairs may extend the school lunch period for the purpose of serving lunches to authorized elderly persons. Independent schools in any city or town so designated may also participate.

The governing body of each city and town shall be responsible for developing a plan for a year-round hot lunch program for the elderly.

The bureau of nutrition education and school food services in the department of education may contract with nonprofit public or private agencies for the preparation and serving of meals to the elderly in accordance with the provisions of this section.

Such meals may be prepared by schools and nonprofit agencies and served on site or in central production centers for service at sites more convenient to the elderly.

The operation of such school lunch programs by public or independent schools and nonprofit public or private agencies shall be subject to the following conditions and restrictions:

(1) The charge to such persons for each lunch shall not exceed fifty cents.

(2) The lunches served shall meet the nutritional standards established jointly by the department of education and the secretary of elder affairs.

(3) The procedure determined by such school committee or such independent school in serving such lunches shall be approved by the

secretary of elder affairs and the bureau of nutrition education and school food services in the department of education.

(4) The secretary of elder affairs shall provide each such person with an identification card authorizing his participation in such lunch programs.

As used in this section, the words "authorized elderly persons" shall mean persons sixty years of age and over and their spouses whose participation in the program has been approved by the secretary of elder affairs. The commonwealth may, subject to appropriation, reimburse any city or town, public school, independent school or nonprofit public or private agency for such costs as are incurred in excess of fifty cents for each such lunch prepared and served, upon written request by such city or town, public school, independent school or nonprofit public or private agency to the commissioner of education on such form as he may prescribe. If the commissioner approved such request, he shall certify to the comptroller that such payments are due and the state treasurer shall pay the same. Any federal funds provided annually for the purposes of this program shall be expended prior to the use of any funds appropriated by the commonwealth.

Added by St.1970, c. 753, § 1. Amended by St.1973, c. 1168, § 10; St.1978, c. 354, § 8.

§ 1M. Division of special education; powers and duties

The powers and duties of the division of special education, established by section one F, shall include the following: (1) to regulate, consult with and assist school committees in the identification, classification, referral and placement of children requiring special education; (2) to regulate all aspects of, and assist with, the development of all special education programs supported in whole or in part by the commonwealth; (3) to coordinate the expertise of professionals from appropriate disciplines, both within and outside of the department and to be the coordinating agency for all state agencies providing educational assessment services and educational services to children requiring special education; (4) to compile data on, and to require all public schools and agencies and any private schools or agencies receiving any funds from the commonwealth to provide information relating to, all children requiring special education who reside in the commonwealth and on all available special education programs supported in whole or in part by the commonwealth; (5) to periodically review and analyze said data in order to evaluate said programs and to disseminate statistical data to any citizen or agency within the commonwealth upon request; provided, however, that records pertaining to individuals shall be kept confidential; (6) to develop public information programs regarding the nature and extent of special educational needs of children residing in the commonwealth and the availability of special education programs to meet those needs; (7) to develop and recommend to the board of education certification standards for educational personnel employed in special education programs and regulations to encourage greater use of ancillary personnel; (8) to cooperate with and assist public and independent colleges and universities within the commonwealth in developing courses and programs best designed to prepare graduates to serve the educational requirements of children requiring special education; (9) to receive and investigate complaints and to conduct public and executive hearings with power of subpoena on behalf of an individual child or group of children receiving or requiring special education regarding any aspect of any special education programs and to initiate its own investigation without a complaint; (10) to receive and allocate federal and state funds for programs for children requiring special education, subject to the priorities established by this section and chapter seventy-one B and such other additional priorities as may be established pursuant to section one P by the board of education; (11) to recommend to the board of education such rules, regulations and guidelines and to issue such directives as are necessary to carry out the purposes of sections one N to one Q, inclusive, and to execute other provisions of law relative to the administration of educational programs for children requiring or receiving special education; (12) to provide for the maximum practicable involvement of parents of children in special education programs in the planning, development, and evaluation of special education programs in the districts serving their children; (13) to approve the purchase, lease and maintenance of all special equipment for the instruction outside of the classroom of handicapped children for whom attendance in public school is not feasible and to regulate the conditions under which such a child may be considered so handicapped; (14) to investigate into and hold hearings upon prima facie denials of equal educational opportunities by reason of national origin, sex, economic status, race, religion, or physical or mental handicap of school aged children requiring special education as defined in section one of said chapter seventy-one B and thereafter issue such declaratory and injunctive orders as may be necessary to cure any actual denials of equal educational opportunities by reason of national origin, sex, economic status, race, religion, and physical or mental handicap of school aged children requiring special education; (15) to require public or private schools and educational agencies receiving any funds from the commonwealth to establish cost accounting and reporting procedures, forms, schedules, rates and audits in conformity with department standards; and to make reports to the department at such times, in such fashion and on such forms as the department may require; (16) to conduct or contract with any federal, state or private agency for the conduct of research and development projects designed to improve the quality of special education programs or increase the efficiency of such programs; (17) in the event of funding shortages, to allocate resources proportionately; (18) to provide for placement of children requiring special education into public schools or agency programs near their place of residence and to allow other placements in the event that suitable public programs or services can not be provided; (19) to take all steps, including but not limited to public hearings and investigations necessary to insure that state and local expenditures for special education provide the maximum feasible benefit to every child receiving or requiring special education; (20) to develop and recommend any appropriate parent or guardian counseling or educational programs which are deemed necessary for the educational development of a child with special needs; (21) to recommend to the board that it withhold funds for special education programs from cities, towns or school districts, private schools or agencies which do not comply with regulations or statutes related to special education programs or do not carry out plans for such compliance within a reasonable period of time provided; however, that nothing contained in this clause shall be construed to prevent the board from withholding state and federal funds to the extent it deems necessary as provided in section one G.

Added by St.1972, c. 766, § 2. Amended by St.1978, c. 354, § 9.

§ 1N. Bureaus in division; appointment of directors; hearings and investigations

There shall be in the division of special education a sufficient number of bureaus to enable it to carry out its powers and duties under section one M, and the board of education, upon the recommendation of the commissioner of education and the associate commissioner for special education, shall appoint a director with experience in the education of children with special needs for each bureau. One bureau shall be responsible for holding hearings and conducting investigations pursuant to clauses (8), (13) and (18) of section one M, section one P and section three of chapter seventy-one B.

Added by St.1972, c. 766, § 2.

§ 1*O*. Regional branches of division; directors; functions

There shall be established in each of the department of education regional offices a regional branch of the division of special education. Each regional branch shall be headed by a director with experience in the education of children with special needs and who shall be appointed by the board of education upon the recommendations of the commissioner of education and the associate commissioner for special education. Said regional branch shall have the following functions: (1) to consult with and assist school committees in implementing the regulations, guidelines and derectives of the department in the area of special education; (2) to directly assist school committees in identifying, diagnosing and evaluating children with special needs and in developing special education programs to meet their individual educational needs; (3) to approve all special education placements by school committees of children with special needs; (4) to assist and encourage the formation of joint agreements between two or more school committees for the provision of special education pursuant to section four of chapter seventy-one B; (5) to investigate and evaluate any special education program at the request of the department or on its own initiative; (6) to maintain a list and inform school committees of professional personnel within and without the region qualified to assess children with special needs pursuant to the provisions of section three of said chapter seventy-one B and to make such information available upon request to parents, guardians or persons with custody of such children; (7) to have such other responsibilities as may be delegated to it by the department.

Added by St.1972, c. 766, § 2.

§ 1P. Special education advisory council; membership; term; powers and duties; reimbursement for expenses

There shall be established in each region a special education advisory council, hereinafter called the advisory council, consisting of at least sixteen members, appointed by the department in consultation with the director of said regional branch. At least eight of the members of an advisory council shall be parents who reside in the region, and whose children are enrolled in a special education program; provided, however, that no more than two parents on each such advisory council shall be parents of children who are not in public school day programs.

Each member shall be appointed for a term of three years. No member may be appointed for more than two consecutive terms. Each advisory council shall advise the regional branch regarding all aspects of special education programs within the region and shall submit a written report annually on the quality and adequacy of such programs to the state advisory commission established under section one Q. In addition to its other powers and duties, the advisory council shall hear and transmit to said state advisory commission, complaints and suggestions of persons interested in special education in the region. Members of each advisory council shall be granted access to special education programs and to information about such programs, subject to restrictions established by the board of education regarding confidentiality, and shall be assisted in carrying out their duties by the regional branch of the division of special education. Members of the advisory councils shall be reimbursed by the commonwealth for expenses necessarily incurred in the performance of their duties.

Added by St.1972, c. 766, § 2.

§ 1Q. State advisory commission for special education; membership; reimbursement for expenses; evaluation of program and recommendations; disagreements

There shall be established in the department a state advisory commission for special education, hereinafter called the commission.

Each special education advisory council established pursuant to section one P shall elect two representatives to the commission, at least one of whom shall be a parent or guardian whose child is receiving special education.

The commissioners of the departments of mental health, public health and public welfare shall each appoint a representative to serve as ex officio members of the commission. Members of the commission shall be reimbursed for expenses which are necessarily incurred in the performance of their duties. The commission shall annually submit a report to the department evaluating the quality and adequacy of special education programs in the commonwealth and recommending improvements in those programs. The department shall implement the recommendations of the commission or shall state in a written reply to said commission the reasons why such recommendations cannot or should not be implemented. In such circumstances, the bureau responsible for hearing complaints and conducting investigations in the division of special education pursuant to section one N shall attempt to resolve the disagreement informally; provided, however, if a settlement cannot be reached the state board of education shall conduct public hearings to investigate the bases for the disagreement and resolve any dispute between the department and the commission.

Added by St.1972, c. 766, § 2.

DIVISION OF SPECIAL EDUCATION

§ 15B. Library center for visually-handicapped children

There shall be established in the division of special education a library center for the acquisition, maintenance and distribution of books and other material deemed essential to the proper instruction and training of visually-handicapped children.

Added by St.1964, c. 535.

CHAPTER 16

DEPARTMENT OF PUBLIC WORKS

Sec.
1. Commission; members; chairman; salaries; bond; powers.

SOLID WASTE DISPOSAL

18. Definitions.
19. Powers and duties of department.
20. Establishment of bureau; function; personnel; rules and regulations.
21. Proposal of programs and plans; statewide master plan; districts, composition, advisory committee; landfill restricted; intrastate transport of solid waste for recycling, etc.
22. District assessments for costs; amounts; limitations.
23. Solid waste disposal fund.
24. Cost records and estimates; assessment of municipalities served; taxation of private facilities; reimbursements.
24A. Taxation of private resource recovery facilities.
24B. Taxation of private residual waste treatment facilities.

§ 1. Commission; members; chairman; salaries; bond; powers

There shall be a department of public works, in this chapter called the department, which shall be under the supervision and control of a public works commission, in this chapter called the commission. Said commission shall consist of five members, not more than three of whom shall be of the same political party, who shall be appointed by the governor, with the advice and consent of the council. Upon the expiration of the term of each member, his successor shall be appointed by the governor for a term coterminous with that of the governor. One member shall be a person with expert knowledge of and skill in the field of business management, one shall be a person with expert knowledge of and skill in the field of finance, one shall be a person with expert knowledge of and skill in engineering. The governor shall from time to time designate a member of the commission as the commissioner of public works, in this chapter called the commissioner, and the other four members shall be associate commissioners. The commissioner shall be the chairman of the commission. The commissioner shall receive a salary of thirty-four thousand eight hundred and seventy-six dollars and each of the associate commissioners shall receive a salary of twenty-seven thousand eight hundred and eighty-two dollars, and each shall devote his full time during business hours to the duties of his office. Each shall give the state treasurer a bond for the faithful performance of his official duties in such penal sum and with such sureties as may be approved by the governor. The commissioner shall be the executive and administrative head of the department and shall be responsible for administering and enforcing the provisions of this chapter relative to the department and to each division thereof under his control and supervision.

Added by St.1963, c. 821, § 1. Amended by St.1967, c. 844, § 9; St.1969, c. 766, § 17; St.1971, c. 116, § 17; St.1972, c. 300, § 16; St.1973, c. 426, § 17; St.1974, c. 422, § 18; St.1977, c. 234, §§ 55 to 57; St.1977, c. 872, §§ 49 to 51.

SOLID WASTE DISPOSAL

§ 18. Definitions

As used in sections nineteen to twenty-four, inclusive, the following words shall have the following meanings:—

"Commissioner", the commissioner of the department of environmental management.

"Department", the department of environmental management.

"Residual waste", solid waste or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

"Resource recovery facility", a solid waste disposal facility utilizing processes for reclaiming the materials or energy values from solid wastes.

"Sludge", any solid, semisolid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

"Solid waste", garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contaminated gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges, special nuclear, or radioactive byproduct material.

"Solid waste disposal facility", incinerator, sanitary landfill, transfer station, composting plant, sorting machine or plant, or other sanitary means of solid waste disposal approved by the department of environmental quality engineering, recycling plant, or any combination of one or more of the above facilities and appurtenant facilities.

"Storage", when used in connection with residual waste, the containment of residual waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such residual waste.

"Treatment", when used in connection with residual waste, any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any residual waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of residual waste so as to render it nonhazardous.

Added by St.1969, c. 834, § 1. Amended by St.1971, c. 844; St.1975, c. 500, § 1; St.1975, c. 706, § 20; St.1978, c. 197, § 1.

§ 19. Powers and duties of department

The department is hereby authorized to dispose of solid wastes, from whatever source, in any manner and at any site which is concurred in by the department of environmental quality engineering, provided that the provisions of section one hundred and fifty A of chapter one hundred and eleven shall not apply. For these purposes the department is authorized and empowered, with said concurrence, to purchase, lease, acquire, receive by gift, or take by eminent domain under the provisions of chapter seventy-nine any land, structures, facilities and easements necessary for solid waste disposal. As used in this section, the term solid waste disposal shall include storage or treatment of residual waste. To carry out the provisions of this section, the department may, subject to the aforesaid concurrence, contract with any person, firm, corporation, or body politic to plan, design, manage, construct, maintain or operate solid waste disposal facilities and to otherwise implement this section, and may accept any gifts or grants of money or property, whether real or personal, from any source, including but not limited to the United States of America or its agencies relative to the disposal of solid wastes. The department may contract with users, public and private, including agencies of the commonwealth and its political subdivisions, to dispose of solid waste. The department may lease any land acquired under this section for solid waste disposal to any person, firm or corporation for the purpose of constructing, operating and maintaining a privately owned solid waste processing, disposal or related facility, including facilities related to the processing, marketing, or manufacturing of materials recovered from solid waste. The department of environmental quality engineering, on a continuing basis, shall review and make recommendations to the department on the manner of operation and adequacy from an environmental quality standpoint of any solid waste disposal facility planned, established or operated under the provisions of sections eighteen to twenty-four, inclusive, and the department shall implement such recommendations, subject to appropriations. Any land acquired under this section may be disposed of by the department upon termination of a solid waste disposal facility or completion of use of a site, with the concurrence of the department of environmental quality engineering in the best interests of the commonwealth and for a use compatible with local zoning by-laws or ordinances; provided, however, that in no event shall such land be so disposed of unless said department, with the concurrence of the department of environmental quality engineering, first offers, in writing, to convey it to the city or town wherein such land lies for an amount of money not less than the principal amount remaining to be paid on bonds issued to meet the capital outlay expenditures relative to such land, and such offer is not accepted within two months after being made or is refused by the mayor or selectmen of the city or town wherein such land lies.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 1; St.1975, c. 706, §§ 21 to 23; St.1978, c. 197, § 2.

§ 20. Establishment of bureau; function; personnel; rules and regulations

There shall be established within the department of environmental management a bureau of solid waste disposal. It shall be the responsibility of the bureau to carry out the provisions of sections eighteen through twenty-four, inclusive. Said bureau shall conduct research and demonstration projects and shall encourage improved methods of solid waste disposal including recycling. The administrative cost of operating said bureau shall be paid and the cost of such projects and grants shall be paid from the general fund. The department may hire such experts, engineers, and other personnel, from such funds as shall be appropriated, as it deems necessary for the operation of the bureau. The department may, subject to the provisions of chapter thirty A, promulgate rules and regulations relating to the storage, collection, transportation, transfer, and disposal of solid waste with respect to facilities established pursuant to sections eighteen to twenty-four, inclusive.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 2; St.1975, c. 706, § 23A.

§ 21. Proposal of programs and plans; statewide master plan; districts, composition, advisory committee; landfill restricted; intrastate transport of solid waste for recycling, etc.

The department, with the cooperation of the department of environmental quality engineering, shall investigate and study the solid waste disposal needs of the commonwealth and, after a public hearing shall develop and submit to the appropriate regional planning agencies for their review and comment, proposed programs for solid waste disposal including plans for their implementation. The department, with the aforesaid cooperation, may designate regional solid waste disposal districts to carry out the purposes of sections eighteen to twenty-four, inclusive. The department shall, with the cooperation of the department of environmental quality engineering, develop and maintain a comprehensive statewide master plan for solid waste disposal subject to the approval of the governor, including any necessary provisions to meet eligibility requirements under any federal program for financial aid in solid waste disposal. A solid waste disposal district shall wherever practicable consist of a single town, or a part thereof, or two or more contiguous cities or towns, or cities and towns, or parts thereof, provided that no city or town, or part thereof, shall be included in more than one said district. Each district shall have an advisory committee comprised of one member from each city or town in such district, who shall be appointed by the city manager in a city having a city manager, by the mayor in any other city, by the selectmen in a town having selectmen, and by the town council in any other town. The members of such committee may be elected officials of such cities or towns and shall serve at the pleasure of their appointing authority. Unless otherwise approved by the governor, unburned solid waste shall not be disposed of in a landfill established under the provisions of sections eighteen to twenty-four, inclusive, unless such unburned solid waste was generated within the district where such landfill is located; provided, however, that solid waste or by-products thereof, may be freely transported throughout the commonwealth for the purposes of recycling, reclamation and resource recovery.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 3; St.1975, c. 706, § 24.

§ 22. District assessments for costs; amounts; limitations

The department shall, after hearing, determine the amount which shall be assessed upon each city or town which is included in a district established under the provisions of section twenty-one to meet the costs, including capital costs, of operating such district. The amount so assessed shall be based upon the amount and category of solid waste originating within such city or town, or the part thereof included in such district, which is disposed of at a facility established under the provisions of this chapter in proportion to the total amount of solid waste originating within such district which is so disposed.

Cities or towns or parts thereof designated as new members of such a solid waste disposal district subsequent to the establishment of such a district will not be assessed costs under this section until such disposal service is actually rendered to that member. Assessments under this section will include a fair and equitable share of capital costs incurred by the district provided such costs can currently be allocated to such member under accepted cost accounting practices. The proportion in which each participating city and town shall annually pay money into the treasury of the commonwealth to meet expenses incurred under sections eighteen through twenty-four, inclusive, and any deficiency in the amounts previously paid in shall reflect appropriate adjustments which take into account fees paid by users other than cities and towns.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 4.

§ 23. Solid waste disposal fund

Money received by the department relative to solid waste disposal, including but not limited to funds received from assessments in cities and towns as provided in sections twenty-two and twenty-four shall be credited on the books of the commonwealth to a fund to be known as the Solid Waste Disposal Fund which shall be expended, subject to appropriation, and the laws relating to state finance, for the purposes of management, maintenance and operation of solid waste disposal facilities established under sections eighteen through twenty-four, and expenses incidental thereto, including without limitation expenses of contracts with an individual, a corporation, or public agency, including agencies of the commonwealth and its political subdivisions, to dispose of solid wastes at said facilities, and for the debt and interest cost relating to any bonds issued to meet the expenditures necessary to carry out the provisions of sections eighteen through twenty-four, inclusive.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 4.

§ 24. Cost records and estimates; assessment of municipalities served; taxation of private facilities; reimbursements

The department shall maintain records of the cost of carrying out the provisions of sections eighteen to twenty-three, inclusive, and shall notify the state treasurer of the estimated amounts of money due the commonwealth from the various municipalities served, and such amounts shall be assessed by the state treasurer and included and made a part of the sum charged to such city or town and shall be paid by such city or town into the state treasury as provided by section twenty of chapter fifty-nine provided that any such city or town may in any year anticipate in whole or in part its assessment and appropriate, raise and deposit the amount thereof with the state treasurer, and any sum so deposited shall be credited against such assessment. The department, after public hearing, shall establish and from time to time amend charges to users other than cities and towns. There shall be an annual reimbursement in lieu of taxes upon the value of any land held by the department for use as a solid waste disposal facility under this chapter to the city or town in which such land is located. The amount of said reimbursement shall be determined in accordance with sections thirteen through seventeen B of chapter fifty-eight.

Added by St.1969, c. 834, § 1. Amended by St.1973, c. 1217, § 5; St.1975, c. 500, § 2.

§ 24A. Taxation of private resource recovery facilities

The operator of a privately owned or operated resource recovery facility shall pay to the city or town in which the facility is located a tax of one dollar per ton of solid waste processed at the facility. Such tax shall be in lieu of all taxes, fees, charges or assessments imposed by the city or town in which the facility is located, except for real estate taxes imposed solely upon the land on which the said facility is located. For purposes of this section, a solid waste disposal facility or resource recovery facility shall not include a transfer station.

Added by St.1975, c. 500, § 3.

§ 24B. Taxation of private residual waste treatment facilities

The operator of a privately owned or operated residual waste treatment facility shall pay to the city or town in which the facility is located a fee based upon the volume of residual waste received at the facility. Such fees shall be in lieu of all taxes, fees, charges or assessments imposed by the city or town in which the facility is located, except for real estate taxes imposed solely upon the land on which the said facility is located, and shall be prescribed by municipal ordinance or by-law within limits established in the rules and regulations of the department.

Added by St.1978, c. 197, § 3.

CHAPTER 17

DEPARTMENT OF PUBLIC HEALTH

Sec.
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COMMISSION ON HYPERTENSION

11. Established; composition; powers and duties, etc.

DRUG ADDICTION REHABILITATION BOARD

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DRUG FORMULARY COMMISSION

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ADVISORY COUNCIL ON ALCOHOLISM

14. Creation; members; term; chairman; executive secretary and committee; meetings; expenses; duties.

§ 1. Composition of department

There shall be a department of public health, consisting of a commissioner of public health and a public health council.

§ 2. Commissioner; qualifications; appointment and term; salary

At the time of appointment, the commissioner shall be a graduate of an accredited four-year college or university and shall have had (*a*) not less than eight years of administrative experience of which at least three years shall have been in the organization, management or delivery of health care services; or (*b*) a doctorate or other degree beyond the level of baccalaureate in the field of business, economics, education, government, law, medicine, psychology, public administration, public health, public policy, social work, urban planning, or a field substantially related to one or more of the foregoing, and not less than five years of administrative experience of which at least two years shall have been in the organization, management or delivery of health care services. For the purposes of this section administrative experience shall mean service in a management or supervisory capacity. Upon the expiration of the term of office of a commissioner, his successor shall be appointed by the governor for a term coterminous with that of the governor. The commissioner shall receive a salary of forty-eight thousand three hundred and ninety-four, and shall devote his full time during business hours to the duties of his office. He shall be the executive and administrative head of the department.

Amended by St.1946, c. 591, § 21; St.1947, c. 658, § 1; St.1950, c. 794; St.1955, c. 730, § 24; St.1959, c. 570, § 1; St.1963, c. 801, § 37; St.1967, c. 844, § 12; St.1969, c. 766, § 21; St.1971, c. 116, § 20; St.1972, c. 300, § 19; St.1973, c. 426, § 20; St.1974, c. 422, § 21; St.1975, c. 236; St.1977, c. 234, §§ 64 to 66; St.1977, c. 872, §§ 58 to 60; St.1979, c. 770, §§ 1 to 3.

§ 2A. Powers of commissioner upon declaration of emergency

Upon declaration by the governor that an emergency exists which is detrimental to the public health, the commissioner may, with the approval of the governor and the public health council, during such period of emergency, take such action and incur such liabilities as he may deem necessary to assure the maintenance of public health and the prevention of disease.

The commissioner, with the approval of the public health council, may establish procedures to be followed during such emergency to insure the continuation of essential public health services and the enforcement of the same.

Upon declaration by the governor that such emergency has terminated, all powers granted to and exercised by the commissioner under this section shall terminate.

Added by St.1965, c. 473.

§ 3. Public health council

The public health council shall consist of the commissioner of public health as chairman and eight members appointed by the governor. Three of the appointed members shall be providers of health services, of whom two shall be physicians. Five of the appointed members shall be nonproviders, at least one of whom shall be appointed by the governor from a list of three persons submitted by the secretary of elder affairs. For the purposes of this section "nonprovider" shall mean a person whose background and experience indicate that he is qualified to act in the broad public interest, who, and whose spouse, parents, siblings or children, has no financial interest in a health care facility, who, and whose spouse, has no employment relationship to a health care facility, to a nonprofit service corporation established in accordance with chapters one hundred and seventy-six A to one hundred and seventy-six E, inclusive, nor to a corporation authorized to insure the health of individuals, and who, and whose spouse, is not licensed to practice medicine. Upon the expiration of the term of office of an appointive member, his successor shall be appointed by the governor, with the advice and consent of the council, for a term of six years and until the qualification of his successor. The council shall meet at least once a month, and at such other times as it shall determine by its rules, or when requested by the commissioner or any four members. The appointive members shall receive twenty-five dollars a day while in conference, and their necessary traveling expenses while in the performance of their official duties.

Amended by St.1939, c. 233, § 1; St.1946, c. 591, § 22; St.1963, c. 801, § 38; St.1972, c. 776, § 2A; St.1973, c. 1168, § 11.

§ 4. Other divisions; directors; civil service

There shall be in the department a division of sanatoria, a division of communicable and venereal diseases, a division of food and drugs, a division of alcoholism, and such other divisions as the commissioner, with the approval of the public health council, may from time to time determine. Each division shall be in charge of a director. The director of a division, other than the division of alcoholism, shall be appointed by the commissioner, subject to the approval of the public health council. The director of the division of alcoholism shall be appointed by the commissioner, with the advice of the advisory council on alcoholism and with the approval of the secretary of human services. The director of each division, other than the division of alcoholism, shall be subject to chapter thirty-one. The director of the division of alcoholism shall be a physician with special training or experience in the treatment of behavioral disorders or medico-social problems, or a person qualified by training and experience in the treatment of behavioral disorders or medico-social problems or, in the organization or administration of treatment services for persons suffering from behavioral disorders or medico-social problems. The provisions of chapter thirty-one shall not apply to the director of the division of alcoholism nor to physicians and psychiatrists therein who have full medical or psychiatric responsibilities, as opposed to administrative responsibilities, or to nurses. Whenever, as a condition of receiving federal grants for the purpose and programs of chapter one hundred and eleven B, the federal government requires that such director or physicians and psychiatrists be subject to the civil service law, the exemption of such officer or employee from the operation of the civil service law shall not apply.

There shall also be in the department a registry of vital records and statistics which may be located within such division as the commissioner determines to be appropriate. The commissioner shall appoint a registrar, subject to the approval of the public health council. The registrar shall be subject to chapter thirty-one and shall, under the supervision of the commissioner, enforce all laws relative to the registry and return of births, marriages and deaths, and may prosecute in the name of the commonwealth any violations thereof.

The responsibility of the division of communicable and venereal diseases shall include, but not be limited to, the prevention and control of communicable and venereal diseases and the provision of diagnostic and treatment care of those having or suspected of having a venereal disease, or any program relating thereto.

The commissioner may require that a physician who is to be appointed a director be certified as to his qualifications by one of the physicians specialty boards approved by the Council on Medical Education and Hospitals of the American Medical Association.

There shall be within the division of food and drugs a furniture and bedding inspection section, a drugs control section, a poultry inspection section, a fish inspection section and such other sections as the director, with the approval of the department, may from time to time determine.

Amended by St.1941, c. 596, § 11; St.1941, c. 725, § 1; St.1957, c. 482, § 1; St.1958, c. 612, § 1; St.1959, c. 611, § 3; St.1963, c. 527; St.1963, c. 558, § 1; St.1964, c. 447, § 1; St.1971, c. 1076, § 1A; St.1974, c. 409, §§ 1, 2; St.1976, c. 486, § 3.

§ 4A. Poison information and control center

There shall be in the department a poison information and control center to accept inquiries and provide comprehensive, full-time, centralized professional information to cities and towns of the commonwealth. The department may through agencies of the commonwealth or by contract with private hospitals, institutions, agencies, individuals or groups provide for such facilities and services as may be necessary to carry out the purposes of this section.

Added by St.1971, c. 752.

§ 5. Deputy commissioners

The commissioner may, with the approval of the public health council, designate the director of one or more, but not more than three, divisions as deputy commissioners, who shall perform such duties as may be prescribed by the commissioner, and he may, with like approval, designate one of the deputy commissioners to perform the duties of the commissioner during his absence or disability.

Amended by St.1948, c. 323.

§ 5A. Repealed by St.1954, c. 564, § 1

§ 6. Assistant directors, treasurers, superintendents, inspectors and other employees

The commissioner may, with the approval of the public health council, appoint assistant directors of divisions and epidemiologists, inspectors and other necessary employees. Persons appointed hereunder shall be subject to chapter thirty-one. The commissioner may require that a physician to be appointed under this section be certified as to his qualifications by one of the physicians' specialty boards approved by the Council on Medical Education and Hospitals of the American Medical Association.

The commissioner, with the approval of the public health council, may appoint a treasurer for each institution, who shall give bond for the faithful performance of his duties, and may appoint a superintendent, physicians, registered nurses, licensed practical nurses, student nurses and other employees necessary for the proper administration of the affairs of the institution under the jurisdiction of the department and may incur all expenses necessary for the maintenance of the institutions.

The superintendent of each hospital or other institution established in the department may act on behalf and in the place of the appointing authority for any action taken under the provisions of sections fifty-three to fifty-seven, inclusive, of chapter thirty and for any action taken under sections nine A, nine B and nine D of chapter thirty and sections forty-three, forty-five and forty-six A of chapter thirty-one, relative to the discharge, removal, suspension and lay-off of a person. For all other purposes, the commissioner shall be the appointing authority; provided, however, that he may delegate preliminary authority to negotiate collective bargaining agreements and other matters relative to the right of employees to organize, negotiate and bargain with employers under section five of chapter one hundred and fifty A and section one hundred and seventy-eight F of chapter one hundred and forty-nine and other applicable statutes.

Amended by St.1941, c. 725, § 2; St.1957, c. 482, § 2; St.1963, c. 558, § 2; St.1968, c. 504, § 1.

§ 6A. Training programs for residents in medical specialties; fellowships

Under the supervision of the commissioner, superintendents of hospitals under the control and supervision of the department may establish programs for the training of residents in medicine, and in such other specialties and subspecialties of medicine as he may deem necessary. The persons undergoing such training shall be designated as fellows and shall be eligible for training grants from the commonwealth, which grants shall be exempt from the provisions of chapter sixty-two. Recipients of said grants shall not be subject to the provisions of chapter thirty-one and shall not be deemed to be employees of the commonwealth. Approval of said training program by the personnel administrator shall be required in accordance with the provisions of section twenty-eight of chapter seven.

Added by St.1966, c. 713, § 1. Amended by St.1974, c. 835, § 19.

§ 6B. Hearings officer

The commissioner shall appoint a hearings officer who shall be an attorney and who shall not be subject to chapter thirty-one. He shall hold hearings as provided in chapter one hundred and eleven.

Added by St.1966, c. 713, § 1.

§ 7. District health officers

The commissioner, with the approval of the public health council, shall appoint a district health officer for each health district provided in section four of chapter one hundred and eleven. Such officers shall be graduates of incorporated medical schools, admitted to practice in the commonwealth, or shall have had at least five years' experience in public health duties and sanitary science, shall give their entire time to the performance of their duties, and shall be subject to chapter thirty-one.

Amended by St.1941, c. 725, § 3.

§§ 8, 9. Repealed by St.1963, c. 558, § 3

§ 9A. Pesticide Board

There shall be in the department a pesticide board, hereinafter referred to as the board, consisting of the commissioner, who shall be the chairman, the commissioner of natural resources, the commissioner of agriculture, the commissioner of public works, the director of the division of fisheries and game, the chairman of the state reclamation board, or their designees, and five members to be appointed by the governor. The appointive members shall serve for terms coterminous with the governor. Said appointive members shall serve without compensation but shall receive their necessary expenses incurred in the discharge of their duties. The board shall meet at least four times annually and from time to time at the call of the chairman or upon written request of any two members of the board. All decisions of the board shall be by majority vote and shall be executed and administered by the commissioner, except as otherwise provided.

Added by St.1962, c. 521, § 1. Amended by St.1963, c. 102; St.1970, c. 874, § 1.

§ 10. Repealed by St.1925, c. 348, § 5

COMMISSION ON HYPERTENSION

§ 11. Established; composition; powers and duties, etc.

There shall be in the department, but in no manner subject to its control, a commission on hypertension, hereinafter called the commission. The commission shall consist of three persons to be appointed by the governor, with the advice and consent of the council, who shall be members of the medical profession experienced in the fields of cardiovascular disease or public health, to serve for terms of one, two and three years, respectively, as he may designate. Upon the expiration of the term of a member, his successor shall be appointed in like manner for a term of three years. The members shall serve without compensation, but shall receive necessary expenses incurred in the discharge of their duties. The chairman of the commission shall be elected by the members. Said commission shall keep informed of the research program relative to high blood pressure and its control established in the Lemuel Shattuck hospital, and may recommend any legislation it deems necessary to assist and promote said program.

Added by St.1956, c. 728.

DRUG ADDICTION REHABILITATION BOARD

§ 12. Repealed by St.1969, c. 889, § 4

DRUG FORMULARY COMMISSION

§ 13. Establishment; membership; formulary of interchangeable drug products; list; revision; rules and regulations; judicial review

There shall be in the department a drug formulary commission consisting of nine members appointed by the governor. The membership shall include a clinical pharmacist, a pharmaceutical chemist, a clinical pharmacologist, a retail pharmacist, a person with experience in pharmaceutical manufacturing, two practicing physicians and two persons not involved in the delivery of health services who shall be representatives of the public. One of the two public appointees by reason of age, training, experience and affiliation shall represent the interests of the elderly. None of the members may be employed by any pharmaceutical manufacturing company.

Members shall serve for a term of three years. Of the first appointments under this section, three shall be appointed for a term of three years; three shall be appointed for a term of two years; and three shall be appointed for a term of one year. As the term of a member expires, his successor shall be appointed to serve for a term of three years.

The commission shall prepare a drug formulary of interchangeable drug products which shall be adopted by regulations of the department. Said formulary shall be based on assessment and evaluation of the United States Pharmacopeia and its supplements, additional pertinent listings of the Department of Health, Education, and Welfare, Food and Drug Administration, other state formularies, formularies of various hospitals of the commonwealth, as well as data submitted by manufacturers. The commission shall assess and evaluate chemical and laboratory testing data, clinical proof of bioequivalence, and therapeutic equivalence where available. The commission shall also adopt for inclusion in said formulary the list of drugs determined by the regulation of the Food and Drug Administration to be therapeutically equivalent and interchangeable when said list becomes available.

Said formulary shall not include drugs which are the subject matter of patent rights issued by the United States Patent Office nor shall it include those drug products for which bioequivalence is considered essential, but for which bioequivalence has not been established by the Food and Drug Administration.

The commission shall provide for distribution copies of such formulary and revisions thereto amongst physicians and pharmacists licensed to practice within the commonwealth and to other appropriate individuals and shall supply a copy to any person on request upon payment of the cost of printing.

Said formulary shall be revised from time to time but in no event less frequently than once a year so as to include new pertinent information on drugs approved for inclusion or drugs to be deleted and to reflect current information as to the therapeutic efficacy of drugs and pharmaceuticals.

The department, in cooperation with the commission, shall promulgate rules and regulations to insure public education regarding the provisions of this section.

Any person or party in interest aggrieved by a finding or report of the commission shall be entitled to a judicial review thereof as provided in section fourteen of chapter thirty A.

Added by Stats.1970, c. 717, § 1. Amended by St.1976, c. 470, § 1.

ADVISORY COUNCIL ON ALCOHOLISM

§ 14. Creation; members; term; chairman; executive secretary and committee; meetings; expenses; duties

There shall be an advisory council on alcoholism consisting of the attorney general, the commissioner of public health, the commissioner of mental health, the commissioner of correction, the commissioner of rehabilitation, the commissioner of education, the commissioner of youth services, the commissioner of probation, the commissioner of public safety, the registrar of motor vehicles, the chairman of the alcoholic beverages control commission, the president of the Massachusetts chiefs of police association, or their designees, all of whom shall serve ex officiis, and eight persons experienced in the field of alcoholism treatment to be appointed by the governor, of whom at least two shall be rehabilitated alcoholics. Upon the expiration of the term of any appointive member his successor shall be appointed in like manner for a term of three years. No person shall be appointed to serve more than two consecutive three-year terms.

The governor shall annually designate the chairman of the council from among its members. The council shall meet at least four times each year, and shall convene at special meetings at the call of the chairman, a majority of the members of the council, the commissioner of public health, or the director of the division of alcoholism. The director of the division of alcoholism shall serve as the executive secretary of the council and shall attend all meetings. The council shall make an annual report to the governor, and shall file a copy of said report with the state secretary, the clerk of the senate and the clerk of the house of representatives. Members of the counsel shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their duties.

Said advisory council shall (a) assist the commissioner of public health and the director of the division of alcoholism in coordinating the efforts of all public and private agencies within the commonwealth concerned with the prevention of alcoholism and the treatment and rehabilitation of alcoholics and intoxicated persons, (b) advise the said commissioner and said director on policy and priorities of need in the commonwealth for comprehensive treatment and rehabilitation of alcoholics, (c) review the annual plans, the proposed annual budget and the programs and services of the division and make recommendations to the commissioner, including approval, modification, or disapproval in regard thereto, and (d) in addition the chairman of the advisory council shall appoint a five member executive committee who shall meet with the commissioner and the director at least twice a month for the purpose of reviewing and implementing programs to cope with current problems and future needs which will arise as a result of the administration of chapter one hundred and eleven B.

Added by St.1971, c. 1076, § 1B. Amended by St.1977, c. 864, § 6.

CHAPTER 19

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28. Admission of mentally retarded children; notice to city or town; reimbursement of school departments for transportation.
29. Residential or day care services; licensing; fees; regulations; disclosure of data; inspection; revocation, suspension, etc. of licenses; appeal; jurisdiction; penalties; privacy of patients.
30. Employees; civil service exemption; federal requirements.

§ 1. Creation; powers of department and commissioner

There shall be a department of mental health, in this chapter called the department, and a commissioner of mental health who shall have and shall exercise exclusive supervision and control of the department. All action of the department shall be taken by the commissioner, or under his direction, by such agents or subordinate officers as he shall determine.

The department shall take cognizance of all matters affecting the mental health of the citizens of the commonwealth and the welfare of the mentally retarded. The department shall have supervision and control of all public facilities for mentally ill or mentally retarded persons and of all persons received into any of said facilities, and shall have general supervision of all private facilities for such persons; provided, however, that this sentence shall not be deemed to interfere with or supersede any other provision of general or special law which grants or confers supervision and control of certain public facilities for mentally ill or mentally retarded persons and persons admitted to such facilities or which grants or confers supervision over certain private facilities for such persons, to any other department of the commonwealth or to any political subdivision. The department shall have supervision and control of all hospitals, state schools, comprehensive centers and clinics, and other mental health facilities established within the department and, subject to appropriation, may further develop additional state hospitals, state schools, comprehensive centers and clinics, or other mental health facilities under commonwealth operation or, subject to appropriation, may contract with any private hospital, institution or other agency furnishing complementary mental health services to pay it the ordinary and reasonable compensation for such services actually rendered or furnished to persons in need thereof. The department may, subject to appropriation, enter into agreements with nonprofit charitable corporations, partnerships or collaboratives, so-called, for the establishment and maintenance of community mental health centers as defined in the Community Mental Health Centers Act 42 U.S.C. 2689 et seq.,[1] for the providing of mental health services and may enter into such agreements with other partnership clinics providing mental health service with the department. Such agreements may provide for the retention of all revenues resulting from all billings and third party reimbursements by the nonprofit charitable corporations, partnerships or collaboratives; provided, that the expenditure of such funds is made in conformance with applicable state and federal law and subject to the approval of the commissioner.

The department shall designate those facilities to which persons may be committed or admitted as patients under the provisions of chapter one hundred and twenty-three. The department shall periodically inform the courts as to the available facilities to which persons may be committed or admitted as patients or residents. The department shall consult and cooperate with the department of public health in developing and making available appropriate facilities of the department for the treatment and rehabilitation of intoxicated persons and alcoholics under the program established pursuant to chapter one hundred and eleven B.

The department shall be a corporation for the purpose of taking, holding and administering in trust for the commonwealth any grant, devise, gift or bequest made either to the commonwealth or to it, for the use of persons under its control in any mental health or retardation facility of the department, or, if the acceptance of such trust is approved by the governor, for expenditure upon any work which the department is authorized to undertake.

The department, subject to the approval of the governor, shall select the site of any new state mental health or retardation facility and any land to be taken or purchased by the commonwealth for the purposes of any new or existing state mental health or retardation facility. If any land or property is taken or purchased by the department, title shall be taken in the name of the commonwealth.

The department of public works shall construct and maintain roads on the grounds or property of a state mental health or retardation facility; and expenses so incurred shall be paid from appropriations for the maintenance of such facility.

The department may make contracts with the federal government relative to receiving persons in the United States armed forces for care and treatment in departmental facilities and for support of such persons.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1970, c. 888, § 1; St.1971, c. 817; St.1971, c. 1076, § 2; St.1978, c. 118, § 1.

[1] 42 U.S.C.A. § 2689 et seq.

§ 2. Commissioner; appointment; term; qualifications; compensation; appointments by commissioner; annual reports; salary of commissioner

The governor shall appoint a commissioner of mental health, whose term shall be coterminous with that of the governor. The commissioner shall devote full time to his duties and may be permitted such professional affiliations as he desires.

Such commissioner shall have a doctorate or other degree beyond the level of the baccalaureate in the field of medicine or psychology, social work, public health, public administration, business administration, or a field substantially related thereto, and shall have had not less than eight years experience in the organization, management or delivery of mental health services or services for the developmentally disabled, no less than three years of which shall have been administrative experience, or shall have not less than eight years administrative experience, no less than three of which shall have been administrative experience in the organization, management or delivery of human services.

The commissioner shall appoint and may remove such agents and subordinate officers as he may deem necessary, and may establish such divisions in the department as he deems appropriate from time to time. Except as otherwise provided by law all offices and positions shall be subject to the provisions of chapter thirty-one; provided, however, the provisions of chapter thirty-one shall not apply to physicians and psychiatrists with full medical-psychiatric responsibility as opposed to administrative responsibility to community mental health and retardation area directors and associate area directors, appointed under the provisions of section eighteen, to nurses employed as such by the department, or to attorneys acting as legal counsel; and provided further, however, and notwithstanding the preceding proviso or any other provision of law, all offices and positions, which as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate and make necessary the application of the provisions of the civil service law, shall be subject to the provisions of chapter thirty-one if such federal standards are uniform in all states.

At the end of each fiscal year, the commissioner shall make an annual report of the activities of the department, and of each district, facility, clinic, or unit under its control, the cost of operating the same, the initiation of new programs, the progress made in providing services and facilities for mental health and mental retardation in the commonwealth and the number of escapes, if any, from any of such facilities and the circumstances thereof.

The commissioner shall receive a salary of forty-eight thousand three hundred and ninety-four dollars.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1969, c. 766, § 25; St.1971, c. 116, § 23; St.1971, c. 193; St.1971, c. 859; St.1972, c. 300, § 21A; St.1973, c. 90; St.1973, c. 426, § 24; St.1974, c. 422, § 29; St.1977, c. 234, §§ 76 to 78; St.1977, c. 872, §§ 73 to 75; St.1977, c. 998, §§ 1, 2.

§ 2A. Evaluation of residential facilities for the mentally retarded; report; plan for remediation of defective conditions

The commissioner shall provide for an evaluation of each residential facility for the mentally retarded operated by the department, such initial evaluation to be held prior to January first, nineteen hundred and seventy-five, and subsequent evaluations every five years thereafter. Such evaluation shall be conducted by the Accreditation Council on Facilities for the Mentally Retarded of the Joint Commission on Accreditation of Hospitals.

The report of each evaluation shall be forwarded to the commissioner and to the administrator of each facility so evaluated. Within sixty days after the receipt of said evaluation the administrator of each facility so evaluated shall prepare a plan in cooperation with state, regional, area and local programmatic, licensing, certification and inspection authorities, which plan shall be delivered forthwith to the commissioner, to the secretaries of the executive offices of administration and finance, human services, public safety, educational affairs, and manpower affairs, to the chairman of the advisory council on mental health and mental retardation, to the chairman of the advisory council for the planning, construction, operation or utilization of facilities for the mentally retarded, and to local boards of health responsible for the inspection of the facilities so evaluated.

The plan shall include recommendations and cost estimates to remedy or provide acceptable alternatives to deficient conditions, if any, noted in the evaluation, and shall include a priority schedule for the remediation of such conditions. Each such plan after the first shall also include specific reasons for all uncorrected deficiencies noted in prior evaluations, reports and plans.

All evaluations, reports and plans under this section shall be public records and shall be made available to interested persons at each residential facility for the mentally retarded operated by the department and at the central, regional and area offices of the department.

Added by St.1973, c. 1068, § 1.

§ 3. Deputy commissioner; appointment; duties; qualifications

The commissioner shall appoint, with the approval of the governor, a person qualified to serve as deputy commissioner of mental health. He shall perform such duties as the commissioner may determine and shall, in the case of a vacancy in the office of commissioner, and during his absence or disability, exercise the powers and perform the duties of the office of commissioner. Said deputy commissioner shall devote his full time to his duties. He may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A.

The deputy commissioner shall have a doctorate or other degree beyond the baccalaureate in the field of medicine or psychology, social work, public health, public administration, business administration, or a field substantially related thereto, and shall have had not less than six years experience in the organization, management or delivery of mental health services or services for the developmentally disabled, no less than two years of which shall have been administrative experience, or shall have not less than six years administrative experience, no less than two of which shall have been administrative experience in the organization, management or delivery of human services. The commissioner or the deputy commissioner shall be a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1976, c. 352.

§ 4. Assistant commissioners; appointment; duties; qualifications

The commissioner shall appoint such assistant commissioners, not to exceed eight in number, as the commissioner may determine to be necessary or desirable to carry out the work of the department. Assistant commissioners shall be assigned areas of responsibility to be specified by the commissioner; provided, however, that at least one such assistant commissioner shall work exclusively in the area of mental retardation. At the time of appointment, they shall possess such qualifications as the commissioner shall determine. Persons appointed to the positions of assistant commissioner shall serve at the pleasure of the commissioner. Chapter thirty-one and section nine A of chapter thirty shall not apply to said positions.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1967, c. 875, § 1; St.1968, c. 689, § 1; St.1974, c. 798, § 1; St.1975, c. 756, § 1.

§§ 5 to 6B. Repealed by St.1975, c. 756, § 2

§ 7. Assistant commissioner for administrative services; appointment; qualifications

The commissioner shall appoint an assistant commissioner for administrative services who shall perform such duties as the commissioner may determine relative to business and financial matters. Said assistant commissioner shall devote full time to his duties. Such assistant commissioner shall have fifteen years' business and managerial experience, and education qualified to undertake the management of the financial and business interests of the department.

Added by St.1966, Ex.Sess., c. 735, § 1.

§§ 8, 8A. Repealed by St.1975, c. 756, § 2

§ 9. Legal counsel

The commissioner shall appoint a member of the Massachusetts bar to serve as legal counsel to the commissioner. He shall devote full time to his duties. Such legal counsel shall have been a member of the bar for not less than six years prior to his appointment and shall have been actively engaged in the practice of law.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 10. Programs for training of residents in psychiatry and other professional disciplines; status of deputy commissioner; educational and experience requirements for certain positions

The commissioner may establish a program for the training of residents in psychiatry and any other professional disciplines as required by departmental programs. Such residents shall be eligible for training grants from the commonwealth. Recipients of said grants shall be exempt from the provisions of chapter thirty-one and shall not be deemed employees of the commonwealth; and such grants shall not be deemed income under chapters sixty-two or sixty-two A. Approval of such training programs by the personnel administrator shall be required in accordance with the provisions of section twenty-eight of chapter seven.

The office of deputy commissioner may be filled by any person in a civil service position in the department. Such person, after filling such office, shall, if not reappointed to such office, be returned to his civil service position without loss of benefits.

Educational and experience requirements for the positions of director of psychological services, director of psychological research, principal psychologist, chief supervisor of psychiatric nursing, head psychiatric social worker and head occupational therapist in the department shall be established as recommended by the commissioner, subject to the approval of the personnel administrator.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1969, c. 28, § 1; St.1974, c. 835, §§ 23, 24.

§ 11. Advisory council for planning, construction, operation or utilization of community mental health centers

There shall be an advisory council for the planning, construction, operation or utilization of community mental health centers, consisting of the commissioners of mental health, public health, social services and public welfare, ex officiis, and twelve persons to be appointed by the governor, who shall include representatives of nongovernmental organizations or groups, of agencies of the commonwealth concerned with planning, construction, operation or utilization of community mental health centers or other mental health facilities, including representatives of consumers of the services provided by such centers and facilities who are familiar with the need for such services. Upon the expiration of the term of office of an appointive member, his successor shall be appointed for a term of four years. No member shall be reappointed for more than two terms. The council shall annually or upon a vacancy elect a chairman from its members. Members of said council shall serve without compensation but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his official duties.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1968, c. 189, § 1; St.1978, c. 552, § 11.

§ 12. Advisory council for planning, construction, operation or utilization of facilities for mentally retarded

There shall be an advisory council for the planning, construction, operation or utilization of facilities for the mentally retarded, consisting of the commissioners of mental health, public health, social services and public welfare, ex officiis, and twelve persons to be appointed by the governor, who shall include representatives of agencies of the commonwealth concerned with planning, construction, operation or utilization of facilities for the mentally retarded and of nongovernmental organizations or groups concerned with education, employment, rehabilitation, welfare, and health, and including representatives of consumers of the services provided by such facilities. Upon the expiration of the term of office of an appointive member, his successor shall be appointed for a term of four years. No member shall be reappointed for more than two terms. The council shall annually or upon a vacancy elect a chairman from its members. Members of said council shall serve without compensation but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his official duties.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1968, c. 189, § 2; St.1978, c. 552, § 12.

§ 13. Duty of councils to consult with and advise department

Each of the advisory councils established under sections eleven and twelve, respectively, shall, in order to carry out the purposes of the federal Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164), as amended[1] consult with and advise the department in any matter relative to surveying the need for community mental health centers or for facilities for the mentally retarded, as the case may be, and in developing programs for constructing such centers or facilities.

Added by St.1966, Ex.Sess., c. 735, § 1.

[1] 42 U.S.C.A. § 2661 et seq.

§ 14. Boards serving in department; research and demonstration projects

The area boards and the boards of trustees of the following public institutions shall serve in the department: Belchertown state school, Massachusetts mental health center (Boston psychopathic hospital), Boston state hospital, Danvers state hospital, Foxborough state hospital, Gardner state hospital, Grafton state hospital, Walter E. Fernald state school, Medfield state hospital, Metropolitan state hospital, Monson developmental center, Northampton state hospital, Taunton state hospital, Westborough state hospital, Worcester state hospital, Cushing hospital, Paul A. Dever state school and Wrentham state school.

Belchertown state school, Walter E. Fernald state school, Paul A. Dever state school, Charles V. Hogan regional center, North Reading rehabilitation center, Rutland Heights mental health rehabilitation center and Wrentham state school shall establish and maintain, subject to appropriation, research and demonstration projects in vocational rehabilitation in cooperation with the federal vocation rehabilitation program.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1969, c. 647, § 2; St.1971, c. 1000, § 2; St.1979, c. 189, § 1.

§ 14A. State facilities under control of department; admissions

The state facilities under the control of the department shall be Worcester state hospital, Taunton state hospital, Northampton state hospital, Danvers state hospital, Grafton state hospital, Westborough state hospital, Foxborough state hospital, Medfield state hospital, Monson developmental center, Gardner state hospital, Wrentham state school, Boston state hospital, Walter E. Fernald state school, Massachusetts mental health center, Belchertown state school, Metropolitan state hospital, Cushing hospital, Paul A. Dever state school and such other mental health or retardation facilities including but not limited to an intensive care unit for women, as the commissioner from time to time shall designate in the regulations of the department, including any facilities or portions thereof which the department may, subject to appropriation, construct or develop for use as homes or facilities for aging persons who are not mentally ill. Admissions of patients to said facilities or homes for aging persons shall be voluntary and not by commitment and said facilities or homes, although under the supervision and control of said department, shall be deemed to be public medical institutions within the meaning of section two of chapter one hundred and eighteen E.

Added by St.1970, c. 888, § 2. Amended by St.1973, c. 1210, § 16; St.1978, c. 367, § 71.

§ 14B. Trustees of institutions; grants, gifts, devises or bequests; expenditure for buildings

The trustees of the public institutions listed in section fourteen shall be a corporation for the purpose of taking and holding by them and their successors, in trust for the commonwealth, any grant or devise of land, and any gift or bequest of money or other personal property, made for the use of the state institution of which they are trustees, and for the purpose of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other securities, with all the powers necessary to carry said purposes into effect. Subject to the approval of the department, they may expend any unrestricted gift or bequest, or part thereof, in the erection or alteration of buildings on land belonging to the state institution; but all such buildings shall belong to the state institution and be managed as a part thereof.

Added by St.1970, c. 888, § 2.

§ 14C. Heads of facilities; vacancies; appointments; qualifications; powers; removal; notice, hearing and review

When a vacancy occurs in the position of superintendent of a state hospital or state school or director or other head of any residential mental health or mental retardation facility of the department, the commissioner shall appoint to such a vacancy a person who holds an earned doctoral degree or master's degree from an accredited college or university in a discipline appropriate to the care, treatment or education of the mentally ill or mentally retarded. Any person receiving such appointment shall have had at least four years of administrative or clinical experience in the field of mental illness or mental retardation or equivalent experience as determined by the commissioner. In the case of those disciplines which provide formal board certification, the appointee as superintendent, director or other head of a residential mental health or retardation facility of the department shall, if not so certified, be eligible for such certification. In the case of uncertainty as to the eligibility of an appointee, the decision of the commissioner with respect to such qualification shall be final. Prior to the appointment of a superintendent, director or other head of a residential mental health or retardation facility of the department, the commissioner shall consult with the area board or boards, the board of trustees concerned with such facility and with the heads of such other institutions of higher learning or hospitals as are integrated with the particular facility. The superintendent with the approval of the commissioner shall appoint and may remove a treasurer and assistant treasurer in each state hospital, each of whom shall give bond for the faithful performance of his duties. The provisions of section forty-nine of chapter thirty-one shall apply to the appointment of such treasurers and assistant treasurers. The superintendent with the approval of the commissioner shall appoint and may remove assistant physicians and necessary subordinate officers and other persons. The superintendent may require that a physician who is to be so appointed be certified as to his qualifications by one of the physicians' specialty boards approved by the Council on Medical Education and Hospitals of the American Medical Association. A superintendent of a state hospital or state school, director or other head of a residential mental health or retardation facility of the department not subject to the provisions of chapter thirty-one may be removed by the commissioner for inefficiency, failure to perform duties properly or other good cause. The superintendent, director or other head sought to be so removed shall be notified of the proposed action, shall be furnished with a copy of the reasons therefor and shall be afforded an opportunity for a hearing before the department in accordance with the provisions of sections ten, eleven and twelve of chapter thirty A. Within twenty days after receipt of notice of the final decision of the department, said superintendent, director or other head, if aggrieved thereby, may bring a petition in the superior court within and for the county wherein he resides or the county wherein the facility is situated, praying that the action of the department be reviewed. After such notice to the department as the court deems necessary, it shall review such action, hear the witnesses and shall affirm the decision of the department unless it shall appear that such decision was made without proper cause or in bad faith, in which case said decision shall be reversed and the petitioner be reinstated to his office without loss of compensation. The decision of the court shall be final and conclusive upon the parties. Upon the issuance of notice of a final decision of the department calling for removal, the commissioner may appoint an acting superintendent, director or other head, who shall serve from the date of issuance of said notice until the above period for petition for judicial review has expired, and, in the event a petition is brought, until a final decision of the court.

Added by St.1970, c. 888, § 2. Amended by St.1975, c. 749; St.1978, c. 393, § 5.

§ 14D. Trustees of institutions; meetings; visits; recommendations; access to records; investigations; reports

(*a*) The trustees of each public institution listed in section fourteen shall meet at least three times per year, shall visit and familiarize themselves with their respective public institutions, and may from time to time make suggestions to the department as to improvements therein, especially such as will make the administration thereof more effective, economical and humane.

(*b*) All trustees shall have free access to all books, records, and accounts pertaining to their respective public institutions, and shall be admitted at all times to the buildings and premises thereof.

(*c*) They shall record their visits and observations at the public institutions in a book kept there for that purpose. They shall transmit promptly to the department a copy of the proceedings of each meeting.

(*d*) They may personally hear and investigate the complaints and requests of any patient or resident, his attorney, guardian, conservator or nearest friend or relative, or any officer or employee of the public institution. If they deem any such matter of sufficient importance, after determining what, if anything, should be done relative thereto, they shall make written report of their determination to the department.

(*e*) They may at any time cause the superintendent or any officer or employee of their respective public institution to appear before them and answer any questions or produce any books or documents relative to the public institution.

Added by St.1970, c. 888, § 2.

§ 14E. State facilities; weighing of farm produce received

In any state facility under the control of the department which receives farm produce, the quantity of the farm produce which is customarily sold by weight shall be weighed instead of estimated, and the actual weight of the produce shall be entered into the records of the institution. This procedure shall be followed in the storeroom and in the canning room for both deliveries from the farm and removals by kitchen personnel.

Added by St.1972, c. 417.

§ 14F. Felonies committed by or upon persons under treatment or supervision of department in its facilities; reporting

The superintendent of any state hospital or state school, or the director of any mental health or retardation facility of the department, who has reason to believe that a crime which is punishable by imprisonment in the state prison has been committed by or upon any person on the premises of the particular facility or by or upon any person in the care of the particular facility but not on the premises thereof, shall, not later than one week from the date of the commission of such crime, report the same to the district attorney of the district within which the crime was committed.

Added by St.1973, c. 532.

§ 15. Boards of trustees of public institutions

The board of trustees for each of the institutions listed in section fourteen, except the Walter E. Fernald state school, shall consist of seven members. One member of each board, except as aforesaid, shall annually in January be appointed for seven years from the first Wednesday of the following February by the governor. The board of trustees of the Walter E. Fernald state school shall consist of six members on the part of the commonwealth, one of whom shall annually be appointed for six years by the governor, and of six members to be elected by the school, subject to the approval of the governor. All the above trustees shall serve without compensation, but shall be reimbursed for all expenses incurred in the performance of their duties.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1977, c. 864, § 7.

§ 16. Mental health advisory council

There shall be a mental health advisory council consisting of thirty persons to be appointed by the governor, of whom at least half shall be members of community mental health and retardation area boards, and of the remaining half at least seven shall be appointed to represent one of the following professions and groups:—state level medical, psychological, nursing, educational, social work, occupational therapy, or bar associations, state level associations for mental health and for mental retardation, industrial and labor groups and the clergy. Upon the expiration of the term of office of any member, his successor shall be appointed for a term of three years. No member shall be appointed to serve more than two consecutive three-year terms. The council shall elect annually a chairman. Members of said council shall serve without compensation, but each member shall be reimbursed by the commonwealth for all expenses incurred in the performance of his official duties.

Said advisory council shall have the following duties:—

(*a*) It shall advise the commissioner on policy, program development, and priorities of need in the commonwealth for comprehensive programs in mental health and retardation;

(*b*) It shall participate with the department in holding a regular series of public hearings throughout the commonwealth to obtain the views of the area boards and other citizens concerning the programs of the department and the needs of the people in mental health and retardation services;

(*c*) It shall review the annual plans and the proposed annual budget of the department, and shall make recommendations to the commissioner in regard thereto;

(*d*) It shall hold at least three meetings per year and shall convene special meetings at the call of the chairman of the council, a majority of the council, or the commissioner.

Added by St.1966, Ex.Sess. c. 735, § 1.

MENTAL HEALTH AND RETARDATION SERVICES

§ 17. Comprehensive program of community mental health and retardation services; establishment; division of state into areas and regions

The department shall establish a comprehensive program of community mental health and retardation services which shall include state hospitals, state schools, clinics, comprehensive centers and other facilities of the department, and to promote such program the department shall, after consultation with the health and welfare commission, divide the commonwealth into areas and regions for the conduct of said mental health and retardation services, and shall establish standards for the development of said community programs on area and regional levels.

In dividing the state into areas, each area shall be so drawn as to serve a population of not less than seventy-five thousand nor more than two hundred thousand, but specific exceptions to this requirement may be made by the commissioner if such exception will not impair the effective or the comprehensive nature of the programs for the area. Each area shall be drawn so as to include and to allow for the development of mental health and retardation services and facilities, as needed, which shall be readily accessible to the people in the area, taking into consideration such factors as geographic boundaries, roads and other means of transportation, population concentration, city, town and county lines, other relevant community services, and community economic and social relationships.

In dividing the state into regions, the department shall establish no less than four and no more than ten regions, each region to consist of such number of areas, in appropriate geographic relationships, as the department may determine. In establishing each region, consideration shall be given to city, town and county lines, population concentrations of as equal proportions as possible, and the achievement of coordination of mental health and retardation services and facilities on a regional level.

The department shall annually, after consultation with the health and welfare commission, review said area and regional divisions, and shall make such changes therein as may be necessary, based upon the requirements of this section.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 18. Community mental health and retardation area directors and associate directors

The commissioner shall, after consultation with the area board, appoint in each community mental health and retardation area an area director, and an associate director. Such area directors and associate area directors shall have an earned doctoral degree or master's degree from an accredited college or university in a discipline appropriate to the care, treatment or education of the mentally ill or mentally retarded. Any person receiving an appointment as area director shall have had at least four years of administrative or clinical experience in a professional position in mental health or retardation services or equivalent experience as determined by the commissioner. Any person receiving such appointment as associate area director shall have had at least two years of administrative or clinical experience in a professional position in mental health or retardation services or equivalent experience as determined by the commissioner.

The area director shall perform such duties as are described in this chapter and any other law and such other duties as are assigned by the department. The associate area director shall act in place of the director in the absence of such director and shall perform such duties as are assigned to him by the director.

Where there is established within the area a comprehensive center operated by the department and designated as a comprehensive center by the commissioner, the area director may also serve by appointment of the commissioner as head of such center. The area board shall advise in the recruitment and selection of the head of such center. The area board shall also serve as the citizen board for such center and no other board shall be formed or designated for such center. The area director, subject to departmental regulations, shall supervise all employees within such center. An area director who serves concurrently as head of a designated comprehensive center or as head of any other facility of the department shall not thereby become subject to the provisions of section fourteen C regarding removal from office.

Salaries for area directors and associate area directors shall be fixed under and in accordance with sections forty-five to fifty, inclusive, of chapter thirty, taking into account those individual cases where an area director is also superintendent of a state hospital or a comprehensive center.

The area director shall, in consultation with the area board, prepare and submit to the regional mental health administrator an annual plan for operation and development of its programs. Such plan shall provide, as far as practicable, a comprehensive community program in mental health and retardation services, as set forth in this section, and as required by departmental standards. The total plan may provide for services and facilities available not only in commonwealth-operated facilities, but through other public or private resources which are made a part of the plan.

The area director shall also prepare and submit to the regional mental health administrator the proposed annual budget of the area for programs to be supported on the area level. The budget shall also set forth program costs which are to be borne by any source other than the commonwealth, including such sources as federal financing or federal research, demonstration, or training grants, municipal financing, community voluntary financing, other grants, contributions, fees, endowments or trusts.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1967, c. 595; St. 1967, c. 780, § 2; St.1970, c. 372, §§ 1, 2; St.1970, c. 888, § 15; St.1971, c. 838; St.1974, c. 835, §§ 25 to 26A; St.1977, c. 998, § 3.

§ 19. Regional mental health administrator and regional administrator for mental retardation

The commissioner shall appoint in each community mental health region a regional mental health administrator and a regional administrator for mental retardation, each with extensive experience and skills in their respective fields. The regional mental health administrator shall perform such duties as are set forth in this chapter and such other duties as the commissioner may determine. He shall devote full time to his duties. He may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A. He shall have an earned doctoral degree or master's degree from an accredited college or university in a discipline appropriate to the care, treatment or education of the mentally ill, and shall have had at least four years of experience in a professional position in mental health services or equivalent experience as determined by the commissioner.

The regional administrator for mental retardation shall perform the duties prescribed by law and such other duties as may be assigned to him by the assistant commissioner for mental retardation or by the commissioner. He shall devote full time to his duties. He may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A. He shall have an earned doctoral degree or master's degree from an accredited college or university in a discipline appropriate to the care, treatment or education of the mentally retarded, and shall have had at least four years of experience in a professional position in mental retardation services or equivalent experience as determined by the commissioner.

The commissioner shall also appoint in each region a regional director for legal medicine who shall, under the supervision of the regional mental health administrator, perform such duties in regards to the regional program in legal medicine as the commissioner may determine. He shall devote full time to his duties. He may be allowed such professional affiliations as the commissioner approves, subject to the provisions of chapter two hundred and sixty-eight A. Such regional director in legal medicine may also serve as director of a court clinic facility or other legal medicine service within his region.

Such regional director shall have an earned doctoral degree or master's degree from an accredited college or university in the behavioral sciences and shall have had at least four years of experience in court work, legal medicine, correction or work with offenders or delinquents or equivalent experience as determined by the commissioner.

The regional administrators shall, subject to appropriation, collaborate, through agreement, contract, or otherwise with the health and welfare commission and other departments of state government concerned with health, welfare and other related services to establish at least one multi-service center in each region, for the purpose of broadening and improving the scope and quality of health and welfare services and to assure the most efficient and effective comprehensive programs for those persons who are unable for social or economic reasons to obtain such services for themselves.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1967, c. 875, §§ 5 to 7; St.1968, c. 689, §§ 4–6; St.1974, c. 798, §§ 5 to 7.

§ 20. Annual budgets

The regional mental health administrator shall receive the proposed annual budgets of each area and the budgets of the state hospitals and state schools within the region, and shall review them with the commissioner.

After such review, the regional administrators shall forward such budgets to the department where they shall become a part of the departmental budget requests submitted annually to the budget director, subject to sections twenty-seven and twenty-eight of chapter twenty-nine.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 21. Area boards

In each area established under section eighteen there shall be a community mental health and retardation area board, hereinafter called the area board, which shall be an agency of the commonwealth, and shall serve in the department. The area board shall consist of twenty-one members, who shall be appointed by the commissioner. Two thirds of the members shall live within the area for which they are appointed, and the remaining members shall either live or work within said area. Four members of said board shall be selected from mental health associations within the area; and four members shall be selected from the associations for the mentally retarded within the area. The commissioner shall include at least one member from each city and if practicable each town in the area, and shall seek to provide proper geographical representation in the membership of the board.

Two thirds of such members shall be persons other than employees of the commonwealth. No member shall be an employee of the department.

Upon the expiration of the term of any member of the area board, his successor shall be appointed, in like manner, for a term of three years. In the event of a vacancy, the commissioner may, in like manner, appoint a member who shall serve for the remainder of the unexpired term. Members of the board shall serve without compensation, and shall be sworn to the faithful performance of their duties. The area board shall suggest for consideration by the commissioner one or more names for each such expiring term or vacancy. No member shall be appointed for more than two consecutive three-year terms.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 22. Area boards selection committees

To facilitate the appointment of the members of the area board, the commissioner shall, with the advice of such mental health associations, associations for the mentally retarded and other local planning groups interested in mental health and in the mentally retarded as are available, appoint in each area a selection committee of seven members, who shall be residents of or workers in the area, and who shall be interested in mental health and retardation. No employee of the department shall be on said selection committee. The selection committee shall file a list of fifty names, selected in accordance with the provisions of section twenty-one, with the commissioner. If said committee fails to file such list within thirty days of its appointment, the commissioner shall within thirty days appoint the members of the area board, subject to the provisions of section twenty-one. If said list is so filed, the commissioner shall appoint from said list twenty-one persons whom he approves as members of the area board, and may, if he disapproves any name or names on said list, appoint another person or persons not on said list to the area board, subject to the provisions of section twenty-one.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 23. Powers of area boards

The area board shall have the following duties and powers:

(*a*) to act as the representative of the citizens of the area;

(*b*) to advise regarding local needs and resources in the development of comprehensive mental health and retardation services;

(*c*) to advise in the recruitment and selection of the area director and associate area director to be appointed by the commissioner, provided that, where the area director will also be an executive head of a facility which is integrated with a university medical center or medical school or with a hospital, the university medical school, or hospital authorities shall advise in the recruitment and selection of such director; provided, that the commissioner may designate a person to act as area director in any case in which such office shall be vacant;

(*d*) to review and approve the annual plan and to review and make recommendations concerning the annual budget for the comprehensive mental health and retardation services of the area;

(*e*) to review arrangements and contracts for programs and services which are a part of the program of the area but which are not conducted within commonwealth-operated facilities;

(*f*) to consult with the commissioner in personnel recruitment and appointment policies, in the establishment of program priorities for the area, in admission policies for all facilities and services, and in policies regarding relationships with other agencies and organizations;

(*g*) to communicate with the mental health advisory council, established under section sixteen, to discuss any matters concerning the area program;

(*h*) to receive and administer any gift or bequest of personal property or funds in trust or any grant or devise of lands made to its use in trust in the interest of the area program of mental health and retardation services, or for any special purpose as indicated in the gift or grant in trust, and may invest the proceeds thereof in notes, bonds or property secured by sufficient mortgages;

(*i*) to receive funds under contracts or other agreements from community sources, including municipalities as authorized by clause (40C) of section five of chapter forty for the rendering of services in collaboration with such municipal or other community or private agencies providing cooperative or complementary services;

(*j*) to hold regular meeting in each year and to convene special meetings on the call of the president, or ten members of the board, or the area director, or the regional mental health administrator. The area director shall be notified of, and may participate in, all meetings, but shall not vote;

(*k*) to elect from their members annually a president and such other officers as they deem appropriate. The area board shall adopt rules for their proper organization and for procedures at meetings. Such rules and any subsequent amendments thereto shall be submitted to the commissioner for approval.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1977, c. 998, § 4.

§ 24. Area mental health and retardation services

In accordance with standards established by the department, each area shall develop and maintain, subject to appropriation, comprehensive community mental health and retardation services including specialized services for both children and adults.

In mental health services, major consideration shall be given to the development of (*a*) inpatient services; (*b*) outpatient services; (*c*) emergency services on a twenty-four-hour basis; (*d*) partial hospitalization services for day care and night care; (*e*) mental health consultation and educational services to community agencies and professional personnel practicing in the area; and (*f*) employment opportunities for patients.

Mental health services shall also where practicable include (*a*) diagnostic services; (*b*) rehabilitative services; (*c*) preventive, precare, and aftercare services within the area; and (*d*) research programs including evaluation of effectiveness and efficiency of the various programs operating within the area.

In mental retardation services, major consideration shall be given to (*a*) diagnostic, evaluation and reevaluation services; (*b*) various treatment services; (*c*) various training programs; (*d*) preschool clinical services; (*e*) long and short-term, day and night-care residential services for various purposes; (*f*) mental health consultation and educational services to community agencies and professional personnel practicing in the area; and (*g*) employment opportunities for patients.

Mental retardation services shall also where practicable include (*a*) research programs including evaluation of effectiveness and efficiency of the various programs operating in the area; and (*b*) preventive services.

The services described in this section may, unless otherwise provided in this chapter or by departmental regulations, be developed for each area through commonwealth-operated facilities or, subject to appropriation, by contracts for services, the rates for such services to be established by the commissioner of administration, and made public. Programs and services may also be developed in cooperation with facilities or other resources located in other community mental health areas of the commonwealth or operated regionally, subject to appropriation. In arranging cooperative services between or among areas, or on a regional basis, provision should be made to ensure continuity of services to clients. Those eligible for participation in any one service must be eligible for and have access to other services made available by the area. Services shall be offered without discrimination to all people in the area except where specialized programs are developed such as for children or the aging, provided that within such specialized categories the services shall be equally available to all such persons in the area.

Notwithstanding any provision of law to the contrary, all revenues received by the community mental health centers operated by the department in state-owned premises by and through community mental health centers including reimbursements under Titles XVIII and XIX of the Social Security Act [1] shall be deposited in one or more trust funds in the state treasury of which the commissioner shall be trustee and may be expended by the department for the operation and maintenance of such community mental health centers and to the extent required by 42 U.S.C. 2689 et seq.,[2] said revenues may be further expended for the management, stabilization, and delivery of mental health services by and through such community mental health centers and its other affiliated services providing agencies; provided, that all expenditures from said trust funds so made shall conform to standard state accounting procedures and such further requirements as prescribed by the comptroller; provided further, that the commissioner in his capacity as trustee shall report monthly to the commissioner of administration and to the house and senate committees on ways and means such revenues and reimbursements received and expenditures made; and provided further, that whenever any such trust fund ceases to be operative, all monies remaining in such fund shall accrue to the General Fund.

Added by St.1966, Ex.Sess., c. 735, § 1. Amended by St.1976, c. 155, §§ 1, 2; St.1978, c. 118, § 2.

[1] 42 U.S.C.A. § 1395 et seq.
[2] 42 U.S.C.A. § 2689 et seq.

§ 25. Area advisory committees on mental retardation services

The area board shall appoint an advisory committee on mental retardation services and such other advisory committees as it may from time to time deem necessary. The members of such committees shall serve for such terms as the area board may determine.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 26. Rules and regulations

The department may from time to time adopt such rules and regulations as it deems necessary to carry out the provisions of this chapter, and may amend or repeal the same.

Added by St.1966, Ex.Sess., c. 735, § 1.

§ 27. Community clinical nursery schools for retarded children; eligibility for admission; transportation; transfer; facilities; supervisory staff

The department shall establish and maintain a community clinical nursery school for retarded children of preschool age in any city or town where six or more such children are determined by the department to be eligible for and seeking admission to such a nursery school. The department may establish and maintain in any other city or town as it shall determine appropriate for the purpose such a clinical nursery school for such children. Upon the application of a parent, the department shall examine a child to determine his eligibility for admission to a clinical nursery school.

Whenever transportation to such nursery school is required, the department shall notify the school department of the city or town in which the child resides of his admission to the nursery school program. Following such notification, the school department shall pay the cost of transporting the child to and from such nursery school on such days as it is in session, and shall be reimbursed one half such cost as provided in section twenty-nine B of chapter sixty-nine.

When a child who is attending a clinical nursery school is prepared for transfer, and in any event when he reaches the age of seven years, the department shall recommend his transfer to a public school program or to some other appropriate program.

The department may establish clinical nursery schools in any public buildings in a city or town where space may be available and suitable for the purpose and if such space is not available may acquire adequate space by renting, leasing or other available means. The department shall appoint a person who, under the direction of the department, shall have general supervision of the clinical nursery schools. The department shall also appoint a clinician to be in attendance at each clinical nursery school, and may employ such other persons as may be required to conduct said clinical nursery schools and such services which may be necessary on a continuing part-time basis shall be performed by persons who are state employees allocated to a job group in the salary schedule as may be determined by the director of personnel and standardization. The department may expend for consulting services such sums as may be appropriated therefor.

If there is not sufficient classroom space in a community clinical nursery school for retarded children established under this section, and a child has been determined to be eligible by the department and is admitted to and attends a clinical nursery school, day care center, or other institution for the care, education, or treatment of retarded children conducted by an accredited school or college within the commonwealth, said department shall, if it approves the program in such facility, notify the school department of the city or town in which such child resides and said school department shall reimburse the parents of such child for the cost of transporting such child to and from such clinical nursery school, day care center, other institution or day program providing care, education, or treatment of retarded children on such days as it is in session. Said school department shall be reimbursed for one half such costs as provided in section twenty-nine B of chapter sixty-nine.

Added by St.1970, c. 888, § 3. Amended by St.1973, c. 1194.

§ 28. Admission of mentally retarded children; notice to city or town; reimbursement of school departments for transportation

Whenever a mentally retarded person qualifies for attendance at an educational, habilitational or day care program or facility of the department of mental health, the department shall notify the school department of the city or town in which the person resides of his admission. Following such notification, the school department shall pay the cost of transporting the person to and from such facility on such days as it is in session, and said school department shall be reimbursed as provided in section twenty-nine B of chapter sixty-nine.

Added by St.1970, c. 888, § 3.

§ 29. Residential or day care services; licensing; fees; regulations; disclosure of data; inspection; revocation, suspension, etc. of licenses; appeal; jurisdiction; penalties; privacy of patients

(*a*) The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any private, county or municipal facility or department or ward of any such facility which offers to the public residential or day care services and is represented as providing treatment of persons who are mentally ill, or mentally retarded, and which is deemed by it to be responsible and suitable to meet applicable licensure standards and requirements except that: (1) the department may license those facilities providing care but not treatment of persons who are mentally ill or mentally retarded, and (2) licensing by the department is not required where such residential or day care treatment is provided within an institution or facility licensed by the department of public health under the provisions of chapter one hundred and eleven unless such services are provided on an involuntary basis. Whether or not a license is issued under clause (1), the department shall make regulations for the operation of such facilities. The department may grant the type of license which it deems suitable for the facility, department or ward. The department shall fix reasonable fees for licenses and renewal thereof.

(*b*) Each facility, department or ward licensed under the provisions of this section shall maintain and make available to the department such statistical and diagnostic data as may be required by the department.

(*c*) Each such facility, department or ward licensed by the department shall be subject to the supervision, visitation and inspection of the department, and the department may make regulations for the proper operation of such facilities, departments or wards.

(*d*) The department may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew a license granted under this section, subject to the procedural requirements of section thirteen of chapter thirty A for any violation of its regulations or standards concerning such facility, department or ward. The department may temporarily suspend a license prior to a hearing in cases of emergency if it deems that such suspension would be in the public interest; provided, however, that upon request of an aggrieved party, a hearing pursuant to section thirteen of chapter thirty A shall be held after the license is suspended. Any party aggrieved by a decision of the department under this section may appeal in accordance with the provisions of section fourteen of chapter thirty A.

(*e*) No facility nor any department or ward of any such facility, for which a license is required under paragraph (*a*), shall provide residential or day care services for the treatment or care of persons who are mentally ill, or mentally retarded unless it has obtained a license under the provisions of this section. The superior court sitting in equity shall have jurisdiction, upon petition of the department, to restrain any violation of the provisions of this section or to take such other action as equity and justice may require. Whoever violates the provisions of this section shall be punished for the first offense by a fine of not more than five hundred dollars and for subsequent offenses by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

(*f*) Each patient shall be granted protection from commercial exploitation of any kind. No patient shall be photographed, interviewed or exposed to public view without either his expressed written consent or that of his legal guardian.

(*g*) Notwithstanding the provisions of paragraphs (*a*) to (*f*), inclusive, any day care center, family day care home, family day care system, family foster care, or group care facility as defined in section nine of chapter twenty-eight A, shall not be subject to the provisions of this section.

Added by St.1970, c. 888, § 3. Amended by St.1972, c. 785, § 3.

§ 30. Employees; civil service exemption; federal requirements

Stationary engineers, steam firemen, school teachers and head farmers employed in mental health and retardation facilities of the department and, except as otherwise provided by the civil service law and rules, the classified labor service of the department, shall be exempt from chapter thirty-one; provided, however, that whenever, as a condition of receiving federal grants for programs and activities to which the federal standards for a merit system of personnel administration relate, federal requirements make necessary the application of the civil service law and rules to any such position, or to the classified labor service or any portion thereof, said positions or service shall be subject to chapter thirty-one; provided, further, such federal requirements are uniform in all states.

Added by St.1970, c. 888, § 3.

CHAPTER 19A

DEPARTMENT OF ELDER AFFAIRS

Sec.
4. Home care program; needs and services of adult handicapped; powers and duties of secretary.

§ 4. Home care program; needs and services of adult handicapped; powers and duties of secretary

The department shall be the principal agency of the commonwealth to mobilize the human, physical, and financial resources available to plan, develop, and implement innovative programs to insure the dignity and independence of elderly persons, including the planning, development, and implementation of a home care program for the elderly in the communities of the commonwealth.

The department shall also serve as an advocate for the needs of the adult handicapped as these needs and services overlap the needs and services of elderly persons.

To accomplish the objectives hereinbefore set forth, the secretary is hereby authorized:

(*a*) to provide assistance to communities in solving local problems with regard to elderly persons including, but not limited to, problems in identifying and coordinating local resources to serve the needs of elderly persons;

(*b*) to facilitate communications and the free flow of information between communities and the offices, agencies, and employees of the commonwealth;

(*c*) to encourage and assist communities to plan, develop, and implement home care programs; provided, that any council on aging may be a member of its designated area agency on aging without being required to join or make any payment to a home care provider.

(*d*) to provide and act as a clearinghouse for information, data, and other materials relative to elderly persons;

(*e*) to initiate and carry out studies and analyses which will aid in solving local, regional, and statewide problems concerning elderly persons;

(*f*) to coordinate through advice and counsel those programs of other state agencies designed to assist in the solution of local, regional, and statewide problems concerning elderly persons;

(*g*) to advise and inform the governor on the affairs and problems of elderly persons in the commonwealth;

(*h*) to exercise the powers and discharge the duties assigned to him in the fields of health care, housing, nutrition, homemaker services, economic opportunity, local and regional planning, transportation, and education and preretirement programs;

(*i*) to further the cooperation of local, state, and federal and private agencies and institutions providing for services or having responsibility for elderly persons;

(*j*) to represent and act on behalf of the commonwealth in connection with federal grant programs applicable to programs for elderly persons in the functional areas described in this section;

(*k*) to seek, accept, and otherwise take advantage of all federal aid available to the department, and to assist other agencies of the commonwealth, local agencies, and community groups in taking advantage of all federal grants and subventions available for elderly persons;

(*l*) to render advice and assistance to communities and other groups in the preparation and submission of grant applications to state and federal agencies relative to programs for elderly persons;

(*m*) to review and coordinate those activities of agencies of the commonwealth and of any political subdivision of the commonwealth at the request of such subdivision, which affect the full and fair utilization of community resources for programs for elderly persons, and initiate programs that will help assure such utilization;

(*n*) to encourage the formation of councils on aging and to assist local communities in the development of said councils.

(*o*) to conduct yearly studies and evaluations pertaining to the quality of care and social services for nursing home patients and report such findings and recommendations to the general court.

In order to assist in the discharge of his duties, the secretary may request from any agency of the commonwealth information pertinent to the affairs and problems of elderly persons.

Nothing in this section shall be construed to be a limitation of the other powers and duties assigned by law to the secretary.

Added by St.1973, c. 1168, § 15. Amended by St.1977, c. 538.

CHAPTER 20

DEPARTMENT OF AGRICULTURE [FOOD AND AGRICULTURE]

Sec.

1. Department; board; commissioner.
6. Organization; divisions; directors and other personnel.

§ 1. Department; board; commissioner

There shall be a department of food and agriculture under the supervision and control of a board of food and agriculture hereinafter called the board, consisting of seven members each of whom shall be from a different county, to be appointed by the governor. At least four members of the board shall be farmers whose principal vocation is the production of food or fibre. Upon the expiration of the term of office of a member of the board his successor shall be appointed by the governor, with the advice and consent of the counsel, for seven years, but no member who has served for five years or longer shall be eligible for reappointment. The board shall meet not less than four times a year at the call of the chairman or any three members. The chairman shall be chosen by a majority of the members of the board present and voting thereon at the first meeting in each calendar year, and shall serve until his successor is chosen. The governor shall appoint a commissioner of food and agriculture who shall serve for a term coterminous with that of the governor. Said commissioner shall have charge of the administration of the department. The department may expend for the traveling expenses of its members and employees incurred in the performance of their official duties and for other necessary expenses of the department such sums as may be annually appropriated.

Added by St.1954, c. 674, § 1. Amended by St.1967, c. 844, § 13; St.1975, c. 706, §§ 27, 28.

§ 6. Organization; divisions; directors and other personnel

The commissioner shall organize the department into divisions, including a division of dairying and animal husbandry, a division of animal health, a division of plant pest control, a division of fairs, a division of markets, a division of agricultural land use, and such other divisions as he may from time to time determine, and shall assign to said divisions their functions. The commissioner shall with the approval of the board, appoint a director of each division to have charge of the work of the division, and may, with like approval, remove such director at any time. The compensation of directors shall be fixed by the commissioner with the approval of the governor and council. The commissioner, with the approval of the board, shall appoint such scientific experts as the work of the department may require, and may assign them to divisions, transfer and, with like approval, remove them, and the provisions of chapter thirty-one shall not apply. He shall, subject to the provisions of said chapter thirty-one, appoint inspectors, investigators, clerks and other assistants as he may deem necessary.

Added by St.1954, c. 674, § 1. Amended by St.1965, c. 678, § 1; St.1967, 347, § 1; St.1974, c. 654, § 1; St.1975, c. 706, § 31.

CHAPTER 21

DEPARTMENT OF NATURAL RESOURCES

[ENVIRONMENTAL AGENCIES]

Sec.

1. Department; "natural resources" defined; duties; divisions and bureau.
2. Board of environmental management.
2A. Members of board.
2B. Removal of members of board.
2C. Meetings of board; joint meetings with advisory board.
2D. Members of board; holding other positions in department.
2E. Compensation of board members; expenses.
3. Commissioner; directors.
3A. Acting commissioner; commissioner's salary.
3B. Experts and other employees.
3C. Annual budget; report.
3D. Acting directors.

DIVISION OF FORESTS AND PARKS

4. Directors; duties of division.
4A. Rules and regulations; penalties; police powers of officers and employees.
4B. Bureaus; chiefs.
4C. Bureau of insect pest control; duties.
4D. Bureau of fire control.
4E. Bureau of recreation.
4F. Bureau of forest development.
4G. Temporary bureau supervisors.

DIVISION OF MARINE FISHERIES

5. Director; cooperation with state and federal agencies.
5A. Marine fisheries advisory commission; composition; qualifications; tenure; vacancies; chairman and clerk; quorum; meetings and hearings; compensation.

DIVISION OF LAW ENFORCEMENT

6. Director; enforcement officers; assistants.
6A. Duties of division; other police agencies.
6B. Police powers; secretary; undersecretary; director; certain assistants.
6C. Badges; uniforms; penalties.
6D. Additional powers.
6E. Rules and regulations governing tours of duty and hours of work.
6F. Violations; noncriminal disposition.
6G. Violations; fines.

DIVISION OF FISHERIES AND GAME

Sec.
7. Fisheries and wildlife board.
7A. Repealed.
7B. Removal of board members.
7C. Holding other positions in department by board members.
7D. Compensation and expenses; board members.
7E. Meetings: officers; appointments; quorum; notice.
7F. Director; assistant director; appointment; qualifications; tenure; duties
7G. Director; powers and duties.
7H. Bureau of wildlife research and management; superintendent; state ornithologist.

DIVISION OF WATER RESOURCES

8. Water resources commission.
8A. Ground water survey program.
9. Chairman; powers and duties of commission; hearings; definitions.
9A. Acquisition of lands and waters; transfer; supervision.
10. Meetings; expenses; compensation, etc.
11. Employees; rules and regulations; annual budget; report.
12. Federal Watershed Protection and Flood Prevention Act; applications for assistance.
13. Works of improvement; assistance from commonwealth; conditions.
14. Works of improvement; aid from commission.
15. Works of improvement; appropriations; federal, state or local funds.
16. Persons engaged in business of digging or drilling wells; registration; reports.
17. Repealed.
17A. Public access board; acquisition of land and water areas facilities; regulations; enforcement; equipment; expenditures.
17B. Scenic and recreational rivers and streams of the commonwealth; definition; protective orders; notice; recording; penalties; enforcement; aggrieved landowners; exclusive remedy; eminent domain; effect of conflicting orders; costs.
17C. Public use of land for recreational purposes; landowner's liability limited; exception.

DIVISION OF CONSERVATION SERVICES

18. Director; powers and duties of division; experts; clerks and employees.
19. State committee; composition; compensation and expenses; meetings; quorum.
20. Powers and duties of state committee.
21. Formation, change of boundaries or dissolution of district; procedure.

Sec.
22. Supervisors of districts; appointment; terms; election of successors; vacancies; compensation and expenses.
23. Governing body of districts; advisors.
24. Powers and duties of supervisors.
25. Inter-district co-operation.

DIVISION OF WATER POLLUTION CONTROL

26. Establishment; director.
26A. Definitions.
27. Powers and duties of division.
28. Water pollution abatement districts; establishment; dissolution; enlargement or consolidation; joint action; application of law.
29. Status of district; district commission; membership; executive director; treasurer; personnel.
30. Powers of district commission.
30A. Financial assistance for construction of collection systems.
31. Development of comprehensive water pollution abatement plan; planning grant.
32. Presentation of plan to division; contents; approval.
33. Financial assistance for abatement facilities.
33A. Financial assistance in towns of more than 20,000 inhabitants.
33B. Engineering reports of plans for facilities; failure of governmental units to submit as ordered; preparation by director; distribution of costs.
33C. Action by director pursuant to section 33B; contract for engineering reports authorized.
33D. Director authorized to order governmental units to construct facilities.
34. Supervision of operation and maintenance of treatment works.
35. General obligation serial bonds or notes; temporary notes; indebtedness.
36. Amounts necessary for payment of bonds and notes and maintenance of district; determination; apportionment of costs; schedule of charges.
37. Reimbursement for costs of water pollution abatement project.
38. Research and demonstrations.
38A. Clean waters scholarship intern program.
39. Reservoirs.
40. Entry upon property; investigation or inspection; examination of records; removal, etc., of hazardous materials.
41. Recommendations by water resources commission.
42. Discharge into waters; violations of chapter, regulation, order or permit; false representations; tampering with monitoring device of method; criminal and civil penalties.
43. Permit proceedings and determinations; regulations; necessity and requirements of permit; application; forms; fees.
44. Discharges without or in violation of permit; other violations; orders.
45. Proposals to suspend or revoke permit; cease and desist orders; right to and request for hearing.

Sec.
46. Injunctive relief: findings of director; powers and duties of attorney general; jurisdiction.
46A. Judicial review; jurisdiction.
47. Repealed.
48. Annual estimates and reports.
49. Repealed.
50. Terminals; licenses; inspection; rules and regulations; fees; penalty.
50A. Oil terminals, pollution prevention, penalty.
50B. Vessels discharging or receiving bulk petroleum products; bond.
51. Coordination with federal government and local authorities; agreements.
52. Repealed.
52A. Waste oil retention facilities; installation and maintenance.
53. Short title; investigation and prosecution of violations.

DIVISION OF MINERAL RESOURCES

54. Director; definition; personnel; licenses; leases; charges and fees; rules and regulations; hearings and notice; exemptions.
55. Cooperation with other governmental units; agreements; federal and private grants.
56. License and lease requirements; violations; penalties; enforcement.

HAZARDOUS WASTE DISPOSAL BOARD

57, 58. Repealed.

§ 1. Department; "natural resources" defined; duties; divisions and bureau

There shall be a department of environmental management, in this chapter called the "department". It shall be the duty of said department to exercise general care and oversight of the environmental management of the commonwealth and of its adjacent waters; to make investigations and to carry on research relative thereto; and to propose and carry out measures for the protection, conservation, control, use, increase, and development thereof.

The words "natural resources", as used herein, shall be held to include ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish of every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits. The department shall also be concerned with the development of public recreation as related to such natural resources; and shall have control and supervision of such parks, forests, and areas of recreational, scenic, or historic significance as may be from time to time committed to it.

In carrying out its duties, the department shall co-operate with the departments of food and agriculture, public health, public works, the University of Massachusetts, and such other departments, boards, officials, and institutions of the commonwealth or its subdivisions as may be concerned with matters under its supervision. It shall co-operate with adjoining states, and with the United States of America or any agency thereof, as authorized by the general court, and receive and dispense such funds from such agencies as shall be authorized by the general court.

The department shall consist of a division of forests and parks, a division of water resources and a bureau of solid waste disposal. Each such division shall be under the administrative supervision of a director.

Added by St.1953, c. 631, § 1. Amended by St.1956, c. 620, § 1; St.1963, c. 664, §§ 1, 2; St.1968, c. 736, § 1; St.1975, c. 706, §§ 33 to 35.

§ 2. Board of environmental management

The department of environmental management shall be under the control of a board of environmental manager, which shall consist of five members appointed by the governor for terms of five years. The governor shall initially appoint the members of the board of environmental management for the respective terms of one, two, three, four and five years. Thereafter all appointments by the governor, except those made to fill a vacancy in an unexpired term shall be for five years.

Added by St.1953, c. 631, § 1. Amended by St.1956, c. 620, § 2; St.1975, c. 706, §§ 36, 37.

§ 2A. Members of board

The members of the board of environmental management shall be selected with due regard to geographical distribution, but no more than one such member shall be appointed from the same county. They shall be qualified in the field of natural resources or in the work of the department.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 38.

§ 2B. Removal of members of board

Members of the board of environmental management may be removed for cause by the governor, with the advice and consent of the council, after due notice and a hearing before the governor, for inefficiency, neglect of duty, misconduct in office, or other cause. A copy of the charge or charges against a board member shall be delivered to him not less than twenty-one days prior to the hearing, and he shall have the right to a public hearing and to appear in person and be represented by counsel at the hearing. Upon removal of any board member, the governor shall thereupon cause to be filed in the office of the state secretary a complete statement of all charges made against such board member, the findings thereon and a complete record of the proceedings thereunder.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 39.

§ 2C. Meetings of board; joint meetings with advisory board

The board of environmental management shall meet within the commonwealth within thirty days after appointment and at least once a month thereafter. It shall elect, at least annually, its own chairman and secretary, and shall make the appointments required to be made by it in the manner herein provided. Three board members shall constitute a quorum for the transaction of business, except in the case of appointment or removal of any person appointed by the board, or the approval of the appointment or removal of a division director. No appointment or removal of any person appointed by the board of environmental management and no approval of the appointment or removal of a division director, shall be valid unless written notice of the meeting for such an appointment or removal or approval thereof, setting forth the business to be transacted thereat, shall have been sent by registered mail to each board member at least twenty-one days prior to such meeting, and then only by the affirmative vote of three or more members present and voting.

The board of environment management and the fisheries, wildlife and recreational vehicles advisory board shall meet jointly at least twice each year and may establish such policies as appear to be in the general interest.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 40.

§ 2D. Members of board; holding other positions in department

No member of the board of environmental management shall hold any other position in the department while serving as such nor for a period of one year thereafter.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 41.

§ 2E. Compensation of board members; expenses

Members of the board of environmental management shall serve without pay, but shall be reimbursed, out of any funds available for the purpose, for necessary expenses incurred in the performance of their official duties. Such reimbursement shall not in any fiscal year exceed three thousand dollars for the total aggregate expenses of all board members.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 42.

§ 3. Commissioner; directors

The commissioner of environmental management shall be the executive and administrative officer of the department, and he shall exercise supervision, direction and control over all the divisions of the department in accordance with such programs and policies as may from time to time be promulgated by the board of environmental management. He shall with the approval of the board appoint the directors of the several divisions, who shall not be subject to the provisions of chapter thirty-one, and he may remove them with like approval. The directors shall be qualified by training, experience and executive ability to administer the duties of their respective offices.

Added by St.1953, c. 681, § 1. Amended by St.1967, c. 844, § 14; St.1975, c. 706, § 43.

§ 3A. Acting commissioner; commissioner's salary

The board of environmental management may designate an acting commissioner in the absence or disability of the commissioner, such acting commissioner to have the powers of the commissioner, the provisions of the general laws to the contrary notwithstanding. The commissioner shall receive such salary, not exceeding twenty-seven thousand eight hundred and eighty-two dollars as the board of environmental management may determine.

Added by St.1953, c. 631, § 1. Amended by St.1963, c. 801, § 14; St.1967, c. 802, § 5; St.1969, c. 766, § 28; St.1971, c. 116, § 26; St.1972, c. 300, § 24; St.1973, c. 426, § 27; St.1974, c. 422, § 32; St.1975, c. 706, § 44; St.1977, c. 234, §§ 85 to 87; St.1977, c. 872, §§ 82 to 84.

§ 3B. Experts and other employees

The commissioner and the division directors, with the approval of the board of environmental management, may employ such experts, clerks, and other employees from time to time, and for such periods as they may determine to be necessary.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 45.

§ 3C. Annual budget; report

The commissioner shall, with the approval of the board of environmental management, prepare an annual budget of the department, and shall file the same pursuant to section three of chapter twenty-nine. Within ninety days after the end of each fiscal year, the commissioner shall render a complete detailed report of all activities, revenue and expenditures of the department and each division thereof, to the board of environmental management, the general court and the governor and council.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 46.

§ 3D. Acting directors

The commissioner, with the approval of the board of environmental management, may designate acting directors during the absence or disability of a director. Such acting director shall have the powers of the director, provisions in the general laws to the contrary notwithstanding.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 47.

DIVISION OF FORESTS AND PARKS

§ 4. Directors; duties of division

The division of forests and parks shall be under the administrative supervision of a director, who shall be called the director of forests and parks.

The division of forests and parks shall administer all general and special laws now administered by the director of the division of forestry and by the director of the division of parks and recreation.

Added by St.1953, c. 631, § 1.

§ 4A. Rules and regulations; penalties; police powers of officers and employees

The director of the division of forests and parks, with the approval of the commissioner, may make rules and regulations for the government and use of all property under the control of the division, including all roads and highways wholly or in part within the boundaries of such property, including rules and regulations relative to hunting and fishing within such boundaries, except in great ponds, not inconsistent with the laws protecting fish, birds and mammals. Such rules and regulations may also provide for the payment of fees and other charges for the parking of vehicles and for the enjoyment of other special privileges within the territory under such control. The director shall cause such rules and regulations to be posted in the territory to which they apply. The sworn certificate of the director that the same have been so posted shall be prima facie evidence thereof. Violation of such a rule or regulation shall be punished by a fine of not exceeding one hundred dollars. The director, subject to the approval of the commissioner, may grant concessions for the sale of refreshments and other articles and the furnishing of services within any such territory.

Forest supervisors, park superintendents and laborers employed by the division, while employed in state forests, forest parks, state parks or reservations, including roads and highways, shall, within the limits of said forests, parks or reservations, except great ponds, have and exercise all the powers and duties of constables, and of police officers, except service of civil process, if so authorized in writing by the director.

The enforcement officers of the division of law enforcement shall, within the limits of such forests, parks or reservations, including roads and highways, except great ponds, have and exercise all the powers and duties of constables and of police officers except service of civil process.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 48; St.1976, c. 25.

§ 4B. Bureaus; chiefs

There shall be in the division of forests and parks a bureau of insect pest control in charge of a chief superintendent, a bureau of forest fire control in charge of a chief fire warden, a bureau of forest development in charge of a chief forester, and a bureau of recreation in charge of a chief of recreation. The director of the division of forests and parks shall, subject to the approval of the commissioner, appoint for a term of five years, outside the provisions of chapter thirty-one, the chief of recreation, who shall be qualified by training and experience to administer the duties of his office. With like approval he may remove the chiefs of the several bureaus.

Added by St.1953, c. 631, § 1. Amended by St.1956, c. 657, § 1.

§ 4C. Bureau of insect pest control; duties

The bureau of insect pest control shall perform such duties as the director, with the approval of the commissioner, may require. In addition to such other duties as may be invested in it by law or by assignment from the director, the bureau shall be responsible for all tree spraying projects on state property. It may, subject to the approval of the director, other provisions of the general laws or any special laws to the contrary notwithstanding, require to be carried out under its direction all tree spraying or other treatment which may be performed by other departments, agencies or political subdivisions of the commonwealth.

Added by St.1953, c. 631, § 1.

§ 4D. Bureau of fire control

The bureau of fire control shall perform such duties as the director, with the approval of the commissioner, may require, in addition to such other duties as may be required by any general or special laws.

Added by St.1953, c. 631, § 1.

§ 4E. Bureau of recreation

The bureau of recreation shall perform such duties as the director, with the approval of the commissioner, may require, and shall be responsible for such other duties pertaining to administration and management of recreation areas as are now vested in the division of parks and recreation by the general laws or any special laws.

Expenses incurred by the bureau relating to the improvement, development and operation of recreation areas and appurtenant facilities shall be construed as chargeable under the provisions of chapter one hundred and thirty-two A.

Added by St.1953, c. 631, § 1.

§ 4F. Bureau of forest development

The bureau of forest development shall, under the supervision of the director, with the approval of the commissioner perform such duties as respects forest management practices, reforestation, development of forest or wooded areas under the control of the department, making them in perpetuity income producing and improving such wooded areas. It shall be responsible for such other duties as are now vested in the division of forestry by the general laws or any special laws.

Added by St.1953, c. 631, § 1.

§ 4G. Temporary bureau supervisors

The director, with the approval of the commissioner, may designate any employee of the division to supervise any of the bureaus during the absence or disability of the chief thereof, and they shall have all the powers required to administer such bureaus, provisions in the general laws to the contrary notwithstanding.

Added by St.1953, c. 631, § 1.

DIVISION OF MARINE FISHERIES

§ 5. Director; cooperation with state and federal agencies

The division of marine fisheries shall be within the department of fisheries, wildlife and recreational vehicles in the executive office of environmental affairs and shall be under the administrative supervision of a director who shall be called the director of marine fisheries. The said division of marine fisheries shall administer all the laws relating to marine fisheries as appearing in chapter one hundred and thirty and any other general or special laws, except as pertain to the enforcement thereof. It shall be responsible for the biological development of marine fish and fisheries. Said division shall co-operate with all departments, boards, officials and institutions of the commonwealth or its subdivisions that may be concerned in any way with matters under its supervision. It shall co-operate with adjoining states and with the United States of America, or any agency thereof, with foreign countries, and any other agency, as may be authorized by the general court, and receive and dispense such funds from any of such agencies, states or governments as may be authorized by the general court.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 49.

§ 5A. Marine fisheries advisory commission; composition; qualifications; tenure; vacancies; chairman and clerk; quorum; meetings and hearings; compensation

There shall be in the division of marine fisheries a commission to be known as the marine fisheries advisory commission hereinafter called the commission, which shall consist of nine members, qualified in the field of marine fisheries by training and experience, to be appointed by the governor with the approval of the council. As the term of a member expires, his successor shall be appointed for a term of three years, except that initially three members shall be appointed for terms of three years, three members shall be appointed for terms of two years and three members shall be appointed for terms of one year. The governor may also, with the like approval, fill any vacancy in an unexpired term. No member of the commission shall hold any other position in the department while serving as such, nor for a period of two years thereafter.

The commission shall annually elect its own chairman and clerk and shall keep accurate records of its meetings and hearings and shall meet at least quarterly and at the call of the chairman. A quorum to conduct business shall consist of five members. The commission shall hold public hearings relative to matters within the jurisdiction of the division and shall make recommendations to the director for the proper management and development of the marine fisheries of the commonwealth. The director or his designee shall attend all meetings and hearings of the commission and may present evidence thereat and shall include in his annual report a report of the commission. The members of the commission shall serve without compensation but shall be reimbursed for actual expenses incurred in the performance of their official duties.

Added by St.1962, c. 715, § 1.

DIVISION OF LAW ENFORCEMENT

§ 6. Director; enforcement officers; assistants

The division of law enforcement shall be within the office of the secretary of the executive office of environmental affairs and shall be under the administrative supervision of a director, called the director of law enforcement. The director shall be qualified by training, experience and executive ability, shall be appointed and may be removed by the secretary and shall not be subject to the provisions of chapter thirty-one. The director shall appoint, with the approval of the secretary of environmental affairs, subject to the provisions of chapter thirty-one, such assistants to the director, enforcement officers and administrative personnel as may be necessary to carry out the duties of the division. Enforcement officers appointed under authority of this section shall be known as natural resource officers. With like approval the director may designate employees of the commonwealth and the United States as deputy natural resource officers, who shall be unpaid.

Added by St.1953, c. 631, § 1. Amended by St.1964, c. 524, § 1; St.1975, c. 706, § 50.

§ 6A. Duties of division; other police agencies

It shall be the duty of the division of law enforcement to enforce all penal laws which it is the duty of any agency within the executive office of environmental affairs to enforce, provisions of the general laws or any special laws to the contrary notwithstanding.

Nothing in this section shall be construed as divesting other officers or employees of the commonwealth of the duty to enforce laws as provided for in the general laws or any special laws. It shall also direct all inspections, claims and investigations. All police agencies shall at once notify the division of law enforcement or a field officer thereof of a person presumed to be lost in any of the woodlands of the commonwealth.

Added by St.1953, c. 631, § 1. Amended by St.1965, c. 665, § 1; St.1969, c. 37, § 1; St.1970, c. 779, § 3; St.1975, c. 706, § 51.

§ 6B. Police powers; secretary; undersecretary; director; certain assistants

The secretary, undersecretary, director and his assistants, wardens, as defined in section one of chapter one hundred and thirty-one, and all natural resource officers and deputies shall have and exercise throughout the commonwealth subject to such rules and regulations as the secretary may from time to time adopt, all the authority of police officers and constables, except the service of civil process. Such rules and regulations shall be filed with the state secretary in accordance with section thirty-seven of chapter thirty. The director may in writing authorize his assistants and any natural resource officer to have in his possession and carry a revolver, club, billy, handcuffs, twisters, or any other weapon or article required in the performance of his official duty.

Added by St.1953, c. 631, § 1. Amended by St.1964, c. 524, § 2; St.1975, c. 706, § 52.

§ 6C. Badges; uniforms; penalties

Each such assistant appointed by the director and each warden, natural resource officer or deputy, when on duty shall wear on his outer clothing or otherwise display a metallic badge bearing the seal of the commonwealth and appropriate words to identify his position, together with a number to be assigned by the director.

The director may, with the approval of the secretary, prescribe by rules and regulations a standard form or forms of uniform to be worn by such personnel. Such badge and uniform or any distinctive part thereof so prescribed shall be worn only by such personnel entitled thereto under said rules and regulations.

Whoever violates this section by wearing such badge or uniform without authority or by impersonating an officer authorized to wear such badge or uniform shall be punished by a fine of not less than ten nor more than one hundred dollars.

Added by St.1953, c. 631, § 1. Amended by St.1964, c. 524, § 3; St.1975, c. 706, § 53.

§ 6D. Additional powers

The secretary, the director and his assistants, natural resource officers and deputies may in the performance of their duties enter upon and pass through or over private property or lands whether or not covered by water, and may keep or dispose of sick, injured or helpless fish, birds or mammals, that may come into their possession, subject to such rules and regulations as the director, with the approval of the secretary, is hereby authorized to adopt.

Added by St.1953, c. 631, § 1. Amended by St.1964, c. 524, § 4; St.1975, c. 706, § 54.

§ 6E. Rules and regulations governing tours of duty and hours of work

Notwithstanding the provisions of chapter one hundred and forty-nine or of any other general law or any special law to the contrary, the director, with the approval of the secretary, shall make rules and regulations governing the tours of duty and hours of work of the assistants to the director and natural resource officers. Such rules and regulations shall provide, in the case of boat based personnel, that such officers may be required to be on duty up to ninety-six consecutive hours, and off duty a similar number of hours, for each tour of duty. Land based personnel, however, shall be compensated for any additional work in accordance with the provisions of section thirty C of chapter one hundred and forty-nine. Boat personnel shall be paid four dollars and fifty cents in lieu of meals allowances for each day of duty and shall be deemed to be on full travel status. Such rules and regulations shall also provide for the assignment of all officers of the division to any area within the commonwealth and for the conduct of such officers in the performance of their duties.

Added by St.1964, c. 524, § 29. Amended by St.1971, c. 885; St.1971, c. 1004, § 2; St.1975, c. 706, § 55.

§ 6F. Violations; noncriminal disposition

If the director, his assistants and any natural resource officer empowered to enforce the section contained in section two of this act,[1] has probable cause to believe that a violation of any of said sections has occurred or is occurring, he may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address may be arrested without a warrant, or if he states a false name and address or a name and address which is not his name and address in ordinary use, shall be punished by a fine of not less than fifty nor more than one hundred dollars. Such officer may, as an alternative to instituting criminal proceedings, forthwith give to the offender a written notice to appear before the clerk of the district court having jurisdiction at any time during office hours, not later than twenty-one days after the date of such violation. Such notice shall be made in triplicate, and shall contain the name and address of the offender and if served with the notice in hand at the time of such violation, the number of his license, if any, to operate motor vehicles; the registration number of the vehicle or motorboat involved, if any; the number of the license, certificate, or permit, if any, issued pursuant to chapter one hundred and thirty or chapter one hundred and thirty-one which is relevant to the violation so charged; the time and place of the violation; the specific offense charged; and the time and place for his required appearance. Such notice shall be signed by the officer, and shall be signed by the offender in acknowledgement that the notice has been received. The officer shall deliver to the offender at the time and place of the violation a copy of said notice. At or before the completion of each tour of duty the officer shall deliver to his commanding officer copies of each notice of such violation that he has issued during such tour. Said commanding officer shall retain and safely preserve one of such copies and shall, at a time not later than the next court day after said issuance, deliver another of such copies to the clerk of the court before whom the offender has been notified to appear. The clerk of each district court shall maintain a separate docket of all such notices to appear.

Any person so notified to appear before the clerk of a district court may appear before such clerk and confess the offense charged, either personally or through an agent duly authorized in writing; provided, that it is the first offense for such violation within two calendar years. At the time of such appearance said person shall provide the clerk with the notice issued by said officer and shall pay to the clerk the fine as provided in section six G, such payment to be made only by postal note, money order or check. Payment of such fine shall operate as a final disposition of the case. Proceedings under this paragraph shall not be deemed criminal; and a person so notified to appear before the clerk of a district court shall not be required to report to any probation officer, and no record of the case shall be entered in the probation records.

If at any time, the court finds that the interests of justice so require, it may cause a warrant to be issued as provided in section thirty-two of chapter two hundred and eighteen of the General Laws.

If any person notified to appear before the clerk of the district court fails to so appear and pay the fine provided hereunder or, having appeared, desires not to avail himself of the procedure for the noncriminal disposition of the case, the clerk shall notify the officer concerned, who shall forthwith make a criminal complaint. If any person fails to appear in accordance with a summons issued upon such complaint the clerk shall send such person by certified mail, return receipt requested, a notice that the complaint is pending and that if the person fails to appear within twenty-one days from the sending of such notice a warrant for his arrest will be issued. If any person fails to appear within twenty-one days from the sending of such notice, the court shall issue a warrant for his arrest.

The notice to appear, provided herein, shall be printed in such form as the chief justice of the municipal court of the city of Boston may prescribe for said court; and as the chief justice of the district courts may prescribe for district courts other than said municipal court of the city of Boston.

The secretary of the executive office of environmental affairs shall adopt rules and regulations consistent with the provisions of this chapter and shall file said regulations in accordance with the provisions of section thirty-seven of chapter thirty.

Added by St.1978, c. 387.

[1] So in original; probably should read "section 6G of this chapter".

§ 6G. Violations; fines

A person notified to appear before the clerk of a district court as provided in section six F for a violation of section four A of chapter twenty-one may so appear within the time specified and pay a fine of ten dollars.

Any person notified to appear before the clerk of a district court as provided in said section six F for a violation of sections seventeen A, thirty-three, thirty-four, thirty-six, thirty-seven, thirty-nine, forty, fifty-one, sixty-nine, seventy, seventy-one, seventy-two, eighty, eighty-one, eighty-two, ninety-five, one hundred and one hundred A of chapter one hundred and thirty may so appear within the time specified and pay a fine of ten dollars.

A person notified to appear before the clerk of a district court as provided in said section six F for a violation of sections thirty-five, thirty-eight, thirty-eight A, forty-one, forty-one A, forty-four, ninety-two, and one hundred C of chapter one hundred and thirty may so appear within the time specified and pay a fine of fifty dollars.

A person notified to appear before the clerk of a district court as provided in said section six F for a violation of sections forty-seven and section seventy-five of chapter one hundred and thirty may so appear within the time specified and pay a fine of one hundred dollars.

A person notified to appear before the clerk of a district court as provided in said section six F for a violation of sections five, eight, ten, eleven, sixteen, nineteen A, twenty-three through twenty-five, inclusive, twenty-six, twenty-six A, twenty-seven, thirty, thirty-two, thirty-six, thirty-eight, forty-four, forty-seven, forty-nine to fifty-four, inclusive, fifty-seven to fifty-nine, inclusive, sixty-nine, seventy-one, seventy-two, seventy-nine, eighty, and eighty-two of chapter one hundred and thirty-one may so appear and pay a fine of twenty dollars.

Added by St.1978, c. 387.

DIVISION OF FISHERIES AND GAME

§ 7. Fisheries and wildlife board

The division of fisheries and wildlife shall be within the department of fisheries, wildlife and recreational vehicles in the executive office of environmental affairs and shall be under the supervision and control of the fisheries and wildlife board, hereinafter called the board, which shall consist of seven members to be appointed by the governor for terms of five years. Five board members shall be appointed from one of each of the five fish and game districts, shall hold and have held for at least five consecutive years a sporting license in the commonwealth, four of whom shall represent the fishing, hunting and trapping interests and at least one of whom shall have been actively engaged in farming on land owned by him for a period of not less than five years. Two board members shall be appointed at large, shall be particularly interested in the propagation, protection, research and management of wild birds and mammals and any, so-called, endangered species and one of whom shall be a wildlife biologist.

Added by St.1953, c. 631, § 1. Amended by St.1974, c. 806, § 26; St.1975, c. 706, § 56.

§ 7A. Repealed by St.1974, c. 806, § 10

§ 7B. Removal of board members

Board members may be removed by the governor, with the advice and consent of the council, after due notice and a hearing before the governor, for inefficiency, neglect of duty, misconduct in office or other cause. A copy of the charge against a board member shall be delivered to him not less than twenty-one days prior to the hearing, and he shall have the right to a public hearing and to appear in person and be represented by counsel at the hearing. Upon removal of any board member, the governor shall thereupon cause to be filed in the office of the state secretary a complete statement of all charges made against such board member, the findings thereon, and a complete record of the proceedings thereunder. The absence of a board member from three consecutive meetings, except for sickness, shall be termed neglect of duty, and shall be a cause for removal as provided herein. In case of resignation, removal or death of a board member, his successor shall be appointed to fill the remainder of the unexpired term in the same manner and subject to the same qualifications as his predecessor.

Added by St.1953, c. 631, § 1.

§ 7C. Holding other positions in department by board members

No board member shall hold any other position in the department of fisheries, wildlife and recreational vehicles while serving as such, nor for a period of one year thereafter.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 57.

§ 7D. Compensation and expenses; board members

The board members shall serve without compensation, but shall be entitled to be reimbursed out of any funds available for the purpose, for their actual traveling and other expenses necessarily incurred in the performance of their official duties, but such reimbursement shall not in any fiscal year exceed three thousand dollars for the total aggregate expenses of all of the board members.

Added by St.1953, c. 631, § 1.

§ 7E. Meetings; officers; appointments; quorum; notice

The members of the board shall meet in the commonwealth, within thirty days after their appointment, and once a month thereafter at such times and places in the commonwealth as they may from time to time determine. They shall at least annually choose a chairman and a secretary from among their members, and shall make the appointments required to be made by them in the manner herein provided. Four board members shall constitute a quorum for the transaction of business, except in the case of the appointment or removal of the director of the division or the approval of the appointment or removal of the superintendent of the bureau of wildlife research and management as hereinafter provided for.

No appointment or removal of any person as director or superintendent shall be valid unless written notice of the meeting for such appointment or removal or approval thereof, setting forth the business to be transacted thereat, shall have been sent by registered mail, to each board member, at least twenty-one days prior to such meeting, and then only by the affirmative vote of three or more members present and voting.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 58.

§ 7F. Director; assistant director; appointment; qualifications; tenure; duties

The director of the division of fisheries and wildlife shall be appointed and may be removed by the board of the division of fisheries and wildlife and the position of director shall not be subject to the provisions of chapter thirty-one. The director, subject to the approval of the fisheries and wildlife board, may appoint, without regard for the provisions of chapter thirty-one, an assistant director for non-game and endangered species and may assign to such assistant director appropriate duties related to the area of non-game and endangered species protection and management. The director and assistant director shall be qualified by training and experience to conduct the duties assigned to them. The director, with the approval of the board, may employ such experts, clerks and other employees from time to time, and for such periods as he may determine to be necessary for its operations.

Added by St.1953, c. 631, § 1. Amended by St.1974, c. 806, § 27.

§ 7G. Director; powers and duties

The director shall, under the control of the board, have charge of, direct and supervise all matters relative to the division and the employees therein. He shall carry out the policies promulgated from time to time by the board, shall prepare the annual budget of the division, and shall file the same pursuant to section three of chapter twenty-nine, and within ninety days after the end of each fiscal year, he shall render a complete detailed report of all activities, revenue and expenditures of the division to the board, the general court and the governor and council.

Added by St.1953, c. 631, § 1.

§ 7H. Bureau of wildlife research and management; superintendent; state ornithologist

There shall be in the division of fisheries and wildlife, under the control of a director, a bureau of wildlife research and management headed by a superintendent, who shall not be subject to the provisions of chapter thirty-one and who shall be appointed by the director, with the approval of the board, and may be removed by him with like approval. He shall be qualified by training and experience to conduct the duties of his office. The superintendent shall, with the approval of the director, provide for all beneficial forms of wildlife; he shall co-operate with the University of Massachusetts and with federal agencies in all matters pertaining to wildlife research and management, and shall supervise and manage all wildlife sanctuaries which are under the management or control of the division. For the purposes of this section, the word "wildlife" means birds, mammals and inland fish.

The superintendent, subject to the approval of the director, shall conduct such scientific studies as he may deem necessary in the work of the bureau, and, subject to like approval, shall collect, classify and designate such studies, data and information as in his opinion will tend to promote the objects of said bureau.

There shall be a state ornithologist in the bureau of wildlife research and management appointed by the director with the approval of the board. He shall advise and consult with the superintendent concerning the avifauna of the commonwealth.

Added by St.1953, c. 631, § 1. Amended by St.1975, c. 706, § 59.

DIVISION OF WATER RESOURCES

§ 8. Water resources commission

The division of water resources of the department of environmental management shall be under the supervision and control of the water resources commission which shall be within the department of environmental quality engineering, hereafter in this section and in sections nine to sixteen, inclusive, called the commission, which shall consist of the commissioner of food and agriculture, the commissioner of commerce and development, the commissioner of the department of the metropolitan district commission, the commissioner of environmental management, the commissioner of environmental quality engineering, and the commissioner of fisheries, wildlife and recreational vehicles and five persons to be appointed by the governor. The five persons appointed by the governor shall each represent a different major type of water user; provided, however, that at least one member shall be a representative of the groundwater industry. Any member ex officio may designate a person to act as his representative at meetings of the commission and, in so far as is practicable, such member shall designate the same person for each such meeting. Upon the expiration of the term of office of an appointive member of said commission his successor shall be appointed, in like manner, for a term of three years.

Added by St.1956, c. 620, § 3. Amended by St.1969, c. 566, § 1; St.1975, c. 706, § 60; St.1977, c. 120, §§ 1, 2; St.1977, c. 201, § 1.

§ 8A. Groundwater survey program

The water resources commission shall be the coordinating body for the purposes of administration of the state's contribution to the cooperative survey program of the United States Geological Survey, hereinafter referred to as the USGS, for detailed groundwater assessments and related hydrological studies. Said commission shall contract, or cause a contract to be executed, with the USGS to conduct a ten year program of detailed groundwater appraisals, aquifer assessments, and such other appropriate geologic and hydrologic studies as may be required for the protection of existing sources of groundwater supply and for the identification of new groundwater sources.

Said groundwater survey program shall include aquifer identification and assessments of quality and yield, and direct technical assistance to localities to solve groundwater problems of less than regional scale. Assistance to localities shall be based on criteria and priorities to be established by the commission which shall include, but not be limited to, the following: a present or recurrent water supply deficit; areas in which the survey would serve more than one community; communities which have suffered loss of supply due to contamination; communities in which demands are placed on supply systems by state institutions; and local commitment to participation. Direct local assistance shall not exceed five hundred thousand dollars and shall be funded fifty per cent by USGS and fifty per cent by the commonwealth, and the total cost of said program shall not exceed, in the aggregate, five million dollars.

For the purposes of this section, groundwater shall mean water which is below the surface of the earth.

Added by St.1979, c. 800, § 1.

§ 9. Chairman; powers and duties of commission; hearings; definitions

The commissioner of environmental management and the commissioner of environmental quality engineering shall be co-chairmen of the commission. The commission shall meet and consult on matters concerning watersheds, water systems, storage basins, both natural and artificial, underground and surface water supplies, and shall study the needs, supplies and resources of the commonwealth with respect to water conservation and flood prevention. The commission shall hold hearings for these purposes at times and places convenient to the public and shall from time to time make recommendations for legislation designed to provide the commonwealth with a basic water policy based upon the common and interdependent interests of agriculture, industry, recreation, wildlife, conservation, domestic consumption and flood prevention. It shall act as a coordinating agency between all departments of the commonwealth and shall co-operate with the agencies of the federal government and all other states in carrying out water conservation and flood prevention programs. It shall be the agency of the commonwealth having supervisory responsibility over programs provided for by the Watershed Protection and Flood Prevention Act (Public Law 566–83d Congress 2nd Session)[1] and shall carry out, maintain and operate any works of improvement authorized by said federal act and as limited by section fourteen; provided, that it shall not be an applicant for assistance under said federal act.

Upon application of a county, conservation district or upon joint application by two or more municipalities, fire districts or water district, or regional district planning commissions, the commission may contract with any agency of the United States or with private firms to conduct water favorability studies within the jurisdictions indicated in such applications; provided that upon approval of such applications, the applicants shall deposit with the commission a sum equal to one-half of the non-federal cost; and provided, further, that the commission is authorized to accept said deposits and disburse such funds in carrying out the purposes of this paragraph without further appropriation and may expend therefor such sums as may be appropriated for the commonwealth's share of such cost. Any member of the commission or any employee or agent of said commission may, at any reasonable time, enter upon any premises while engaged in the performance of any duties required under this paragraph. The commission may negotiate with any property owner such terms, agreements or contracts as may be necessary or convenient in carrying out the duties required by this paragraph.

The term "works of improvement" as used in this section and in sections ten to fifteen, inclusive, shall mean any undertaking for (1) flood prevention, including structural and land treatment measures, or (2) agricultural phases of the conservation, development, utilization and disposal of water in watershed or sub-watershed areas not exceeding two hundred and fifty thousand acres and not including any single structure which provides more than five thousand acre-feet of total capacity. A number of such watersheds when they are component parts of a larger watershed may be planned together when the local sponsoring organizations so desire.

The term "local organization" in this section and in sections ten to fifteen, inclusive, shall mean any political subdivision of the commonwealth, or soil conservation district, or combinations thereof.

Added by St.1956, c. 620, § 3. Amended by St.1964, c. 643, § 1; St.1975, c. 706, § 61.

[1] 16 U.S.C.A. § 1001 et seq.

§ 9A. Acquisition of lands and waters; transfer; supervision

The commission may acquire by purchase, gift, lease, eminent domain, or otherwise lands and waters and easements therein to protect and conserve water impoundment sites and land adjacent to such sites which it deems necessary to meet the future water resource needs of the commonwealth for flood control, low flow augmentation, and municipal water supply, provided that the exercise of the power of eminent domain shall be subject to the approval of the governor, the board of selectmen in a town or the city council in a city in which the land is located. If such board or council fails to approve or disapprove such proposed taking within ninety days after receipt of written notice of the proposed taking from the commission, such board or council shall be deemed to have approved the same. No subsequent transfer or sale of such lands or waters by the commission to any agency of the commonwealth or to any city, town, or district shall be made and no construction or water resources improvement thereon shall be undertaken without the approval of the general court. The commission may enter into an agreement for the temporary supervision and maintenance of such lands and waters with any appropriate public agency, and may permit temporary compatible private uses subject to such conditions as it may impose. Said lands shall be subject to payments in lieu of taxes as provided in sections thirteen to seventeen, inclusive, of chapter fifty-eight. The division of water resources and its duly authorized agents, without being liable for trespass, shall have the right after giving due notice, accompanied by a detailed plan to enter upon any lands for the purpose of making surveys, test pits, borings and geologic investigation. Any damages to property resulting by the exercise of the aforementioned rights shall be reimbursed by the commission to the owner of the property so damaged.

Added by St.1970, c. 767, § 1.

§ 10. **Meetings; expenses; compensation, etc.**

The commission shall meet on the second Monday of each month and may meet more often as the members may determine. The members of the commission may be reimbursed for expenses incurred in connection with their duties and the three appointive members of the commission shall, in addition to their expenses, receive eighteen dollars and seventy-five cents per day for each day of service to said commission, but the total amount payable to such appointive member shall not exceed four hundred and fifty dollars in any calendar year.

Added by St.1956, c. 620, § 3. Amended by St.1963, c. 801, § 45.

§ 11. **Employees; rules and regulations; annual budget; report**

The commission may employ such technical and clerical assistance and consultants as may be necessary, and may utilize the services of technical and clerical employees of the several departments of the commonwealth. The commission may establish rules and regulations as may be necessary for the proper administration of sections nine to sixteen, inclusive, and shall annually submit to the budget commissioner the estimates required by sections three and four of chapter twenty-nine, and shall file an annual report as required by sections thirty-two and thirty-three of chapter thirty.

Added by St.1956, c. 620, § 3. Amended by St.1977, c. 201, § 2.

§ 12. Federal Watershed Protection and Flood Prevention Act; applications for assistance

Applications for assistance under the federal Watershed Protection and Flood Prevention Act [1] shall be initiated by the local organization, and may not be initiated by the commission. Such applications shall be filed with the commission, which may disapprove the same within forty-five days from the date of filing. The commission may give approval only to applications submitted by local organizations, but any local or regional voluntary citizens' group, established under chapter one hundred and eighty for the purpose of furthering water conservation and flood prevention, may join with any local organization in making application to the commission for assistance under the federal Watershed Protection and Flood Prevention Act.

Added by St.1956, c. 620, § 3.

[1] 16 U.S.C.A. § 1001 et seq.

§ 13. Works of improvement; assistance from commonwealth; conditions

The commission shall require, as a condition to providing assistance from the commonwealth for the installation and operation and maintenance of works of improvement, that local organizations shall (1) assume responsibility for all planning for works of improvement to be constructed within the watershed area, but the local organization may, nevertheless, request, through the commission, technical advice from any appropriate agency of the commonwealth; (2) acquire, in the name of the commonwealth, and without cost to the commonwealth, such land, easements or rights of way as will be needed in connection with works of improvement installed with the assistance of the commonwealth; (3) acquire, or provide assurance that landowners have acquired, such water rights, pursuant to the laws of the commonwealth, as may be needed in the installation and operation of the works of improvement; and (4) obtain agreements to carry out recommended soil conservation measures and proper farm plans from owners of not less than fifty per cent of the lands situated in the drainage area above each retention reservoir to be installed with the assistance of the commonwealth.

Added by St.1956, c. 620, § 3.

§ 14. Works of improvement; aid from commission

At such time as the United States Secretary of Agriculture and the interested local organization have agreed upon a plan for works of improvement, the commission may (1) assume such proportionate share of the nonfederal cost of installing any works of improvement involving federal assistance as it determines to be equitable in consideration of anticipated benefits from such improvements; provided, that no part of the construction cost for providing any capacity in structures for purposes other than flood prevention and features related thereto shall be borne by the commonwealth; and (2) make arrangements, through the local organizations satisfactory to the said Secretary of Agriculture for defraying the costs of operating and maintaining such works of improvement, in accordance with regulations presented by the said Secretary of Agriculture.

In order to carry out the provisions of the above clause (1) the commission shall be the contracting authority for the construction of any works of improvement involving assistance from the commonwealth, but shall designate the appropriate department or departments of the commonwealth or subdivision or subdivisions thereof as the agent or agents of the commission for the purpose of making such contracts or performing the work of construction; provided that whenever the said works of improvement involve stream clearance, channel improvement or construction of dams the commission shall designate the division of waterways in the department of environmental quality engineering as the contracting agent, except that when the work to be done involves property under the care and control of the metropolitan district commission the commission shall designate the said metropolitan district commission as the contracting agent.

In order to carry out the provisions of the above clause (2) the commission is authorized to assume such proportionate share of the costs of operation and maintenance of said works of improvement as it determines to be equitable in consideration of anticipated benefits from such improvements.

In order to insure the continued operation and maintenance of any and all works of improvement that have been installed with the assistance of state funds, the commission is authorized and directed to designate as its agent or agents for this purpose the department or departments of the commonwealth or the subdivision or subdivisions thereof which constructed or contracted for the construction of said works of improvement.

Added by St.1956, c. 620, § 8. Amended by St.1975, c. 706, § 62.

§ 15. Works of improvement; appropriations; federal, state or local funds

At such time as the United States Secretary of Agriculture and the interested local organization have agreed upon a plan for works of improvement, and the local organization has met the requirements for receiving assistance from the commonwealth in installing, operating and maintaining the works of improvement as set forth in section fourteen, the commission shall request the general court to appropriate such sums of money as are needed to meet (1) the share of the non-federal cost of installing the works of improvement and (2) the share of the cost of operating and maintaining said works of improvement, which the commission proposes to assume under the provisions of section fourteen.

Any funds received from local organizations or any other source, including funds made available by the federal government, shall be in addition to funds made available to the commission by the general court.

With respect to all projects for which funds of the commonwealth have been appropriated as partial or total payment of the non-federal share of the costs of constructing, operating or maintaining the proposed works of improvement, the commission shall be the recipient of any federal, state, or local funds appropriated for such projects. Funds made available from any source for a specific project shall be held by the commission for said project, and may not be allocated to any other project.

Nothing in this section or in section fourteen shall be construed to prevent or limit a local organization from assuming the full amount of the non-federal share of the cost of installing any works of improvement.

Added by St.1956, c. 620, § 3.

§ 16. Persons engaged in business of digging or drilling wells; registration; reports

No person shall engage in the business of digging or drilling wells within the commonwealth unless he is registered with the water resources commission. Each person intending to engage in said business shall register annually with said commission, and upon payment of a fee of ten dollars shall be issued a certificate indicating that he is so registered. Each registration shall be in force, unless sooner cancelled, suspended or revoked for violation of this section or any of the rules and regulations established under section eleven, until July first following the year of its issuance.

Within thirty days after completion of any well by digging or drilling, the person engaged in the business of digging or drilling wells shall submit a report to the commission setting forth such information as may be required under said rules and regulations.

Whoever engages in the business of digging or drilling wells without being registered or fails to submit a report upon the completion of a well shall be punished by a fine of not more than three hundred dollars.

Added by St.1962, c. 513. Amended by St.1977, c. 201, § 3.

§ 17. Repealed by St.1977, c. 363A, § 61

§ 17A. Public access board; acquisition of land and water areas facilities; regulations; enforcement; equipment; expenditures

There shall be in the department of fisheries, wildlife and recreational vehicles a board to be known as the public access board composed of the director of the division of fisheries and wildlife, the director of the division of marine and recreational vehicles, the director of marine fisheries, the director of the division of forests and parks and the deputy chief engineer of the division of waterways or their respective designees and the chairmanship of said board shall rotate annually among said members. The board shall meet at the call of the chairman and shall by majority vote designate locations of public access to great ponds and other waters within the commonwealth and locations of trails and paths for snowmobiling, hiking, skiing or other uses; provided, however, that no location shall be so designated except after a public hearing in the city or town in which it is situated. Notice of such hearing shall be given in the case of a city, to its mayor and in the case of a town, to its board of selectmen at least twenty days before the date of the hearing. The department shall, after receiving written notice of such designation, acquire by purchase, gift, or lease or, with the consent of the governor, by eminent domain such land or water areas, or interests and easements therein, which have been designated by said board for the purpose of providing such public access, trails and related facilities, or it may utilize public lands with the consent of the department or other public agency in charge thereof. The department may construct such roads, parking areas, docks, ramps, trails, shelters, comfort stations and related facilities as may be designated by said board and shall maintain, operate and improve such facilities and associated land and water areas, provided the department shall designate the department of environmental quality engineering as its contracting agent for the design and construction of public accesses to water; and provided, further, that the department may enter into agreements with other public agencies to transfer operation of such areas to said agency. The department may adopt, after public hearing, regulations governing the use of land and water areas under this section, violation of which may be punished by a fine of not more than one hundred dollars and which may be enforced by any employee of the commonwealth, or of a city or town, having police powers. The cost of such acquisition, construction, maintenance, operation and improvement, and the administrative and other expenses, including planning, incurred by the department in connection with the activities authorized by this section shall be chargeable to the Public Access Fund. The board may purchase from sums appropriated from the Public Access Fund snowmobiles and other safety, rescue and patrol equipment appropriate for winter use, and may transfer the same to agencies of the commonwealth having responsibilities for law enforcement or management of public lands.

Added by St.1966, c. 621, § 2. Amended by St.1968, c. 594; St.1970, c. 589, § 3; St.1971, c. 864; St.1974, c. 806, § 28; St.1975, c. 706, §§ 64, 65.

§ 17B. Scenic and recreational rivers and streams of the commonwealth; definition; protective orders; notice; recording; penalties; enforcement; aggrieved landowners; exclusive remedy; eminent domain; effect of conflicting orders; costs

The commissioner, with the approval of the board of environmental management, may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife, fresh water fisheries, and irreplaceable wild, scenic and recreational river resources, adopt, amend, modify, or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting the scenic and recreational rivers and streams of the commonwealth. The notice required by section two of chapter thirty A as a condition precedent to the adoption or amendment of any regulation shall be given to each assessed owner of any land on the banks of any such river or stream. In this section, the term "scenic and recreational rivers and streams of the commonwealth" shall mean, rivers and streams of the commonwealth or portions thereof, and such contiguous land not to exceed one hundred yards on either side of the natural bank of such river as the commissioner reasonably deems it necessary to protect by any such order.

The commissioner, with the approval of said board, may, for the purpose of protecting the scenic and recreational rivers and streams of the commonwealth, provide for the restriction and classification of the waters of said rivers and streams for scenic or recreational purposes. Signs indicating such restriction or classification shall be posted by the department at reasonable intervals along the banks of said rivers and streams.

Upon adoption of any such order or any order amending, modifying or appealing the same, the commissioner shall cause a copy thereof, together with a plan of the river or stream or portion thereof affected and a list of the assessed owners of such lands, to be recorded in the registry of deeds for the county wherein said river or stream is located, and shall mail a copy of such order and plan to each assessed owner of such lands affected thereby. Such order shall not be subject to the provisions of chapter one hundred and eighty-four. Any person who violates any such order shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by imprisonment for not more than six months, or both.

The superior court shall have jurisdiction in equity to restrain violations of such orders.

Any person having a recorded interest in land affected by any such order, may, within ninety days after receiving notice thereof, petition the superior court to determine whether such order unreasonably restricts the use of his property as to deprive him of the practical uses thereof and which constitutes an unreasonable exercise of the police power so as to become the equivalent of a taking without compensation. If the court finds the order to be unreasonable, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The commissioner shall cause a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is registered, in the registry district of the land court. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any person have a right to petition for the assessment of damages under chapter seventy-nine by reason of the adoption of any such order.

The department may, after a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the commonwealth by eminent domain under the provisions of chapter seventy-nine and hold the same for the purposes set forth in this section.

No action by the commissioner or the department under this section shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the department of public works, the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two. No order adopted under the provisions of this section shall be deemed to invalidate any order imposed prior thereto by the department of natural resources, the department of environmental management or the department of environmental quality engineering pursuant to section twenty-seven A of chapter one hundred and thirty or of sections forty, forty A or one hundred and five of chapter one hundred and thirty-one.

Costs incurred under this section including, but not limited to, the acquisition of lands or interests therein, awards of damages, surveying and mapping, the preparation of designation plans, printing of reports, conducting of public hearings, and expenses incidental thereto may be paid in accordance with the provisions of section seventeen of chapter twenty-one.

Added by St.1971, c. 840. Amended by St.1973, c. 984, § 1; St.1975, c. 706, §§ 66, 67.

§ 17C. Public use of land for recreational purposes; landowner's liability limited; exception

An owner of land who permits the public to use such land for recreational purposes without imposing a charge or fee therefor, or who leases his land for said purposes to the commonwealth or any political subdivision thereof shall not be liable to any member of the public who uses said land for the aforesaid purposes for injuries to person or property sustained by him while on said land in the absence of wilful, wanton or reckless conduct by such owner, nor shall such permission be deemed to confer upon any person so using said land the status of an invitee or licensee to whom any duty would be owed by said owner. The liability of an owner who imposes a charge or fee for the use of his land by the public for recreational purposes shall not be limited by any provision of this section.

Added by St.1972, c. 575.

DIVISION OF CONSERVATION SERVICES

§ 18. Director; powers and duties of division; experts; clerks and employees

The division of conservation services within the office of the secretary of the executive office of environmental affairs shall be under the administrative supervision of a director who shall be called the director of conservation services. The director shall be qualified by training, experience and executive ability, shall be appointed and may be removed by the secretary and shall not be subject to the provisions of chapter thirty-one. The division shall administer the provisions of this chapter relating to conservation districts and such other programs and duties as may be assigned to it by the secretary from time to time. It may receive and expend or dispense without further authorization such federal funds, services, grants or subventions as may be made available for the purposes of the division. The director shall appoint, with the approval of the secretary, subject to the provisions of chapter thirty-one, such experts, clerks and other employees from time to time, and for such periods, as he may determine to be necessary.

Added by St.1963, c. 664, § 3. Amended by St.1975, c. 706, § 68.

§ 19. State committee; composition; compensation and expenses; meetings; quorum

There shall be in the division a committee for conservation of soil, water and related resources, hereafter in this chapter called the state committee. Said committee shall consist of seven voting members and three nonvoting advisory members. The seven voting members shall include three ex officio and four appointed members. The ex officio members shall be the commissioner of food and agriculture, the chairman of the water resources commission, and the dean of the college of agriculture at the University of Massachusetts. The four appointed members shall be appointed by said members ex officio, as follows:—one from a list of two names submitted by the Massachusetts Association of Soil Conservation Districts, one from a list of two names submitted by the Massachusetts Association of Conservation Commissions, one from a list of two names submitted by the executive committee of the State Grange and one from a list of two names submitted by the executive committee of the Massachusetts Farm Bureau Federation. The state conservationist of the United States soil conservation service, the director of the division of fisheries and wildlife, and the chairman of the state reclamation board shall be the advisory members. Appointed members shall serve for terms of four years, except that the four members of the state committee initially appointed shall be appointed for terms of one, two, three and four years, respectively, as the members ex officio may designate and until qualification of their successors. The appointed members of the state committee shall not receive any compensation for their services, but shall be paid their traveling and other expenses actually incurred in the performance of their duties as such members. The state committee shall hold regular meetings on the second Thursday in the months of January, April, July, October, and in addition shall hold meetings at the call of the chairman or on the request of any three members. The state committee shall annually elect a chairman who is not an ex officio member and a secretary from among the voting members of the committee. A majority of the voting members of the state committee shall constitute a quorum.

Added by St.1963, c. 664, § 3. Amended by St.1966, c. 237; St.1975, c. 706, §§ 69, 70.

§ 20. Powers and duties of state committee

The state committee, unless otherwise specified, shall have the following powers and duties:

(1) To encourage and assist educational work in the conservation and development of renewable natural resources, including soil, water, plant life, woodland, fish and wildlife, and recreation resources, the control and prevention of soil erosion, the prevention of erosion, floodwater and sediment damages, and the conservation, development, utilization and disposal of water, through co-operation with all federal, state, county, local, public and private resource agencies.

(2) To advise the director in developing policies of the division of conservation services relating to the operation of conservation districts.

(3) To perform the functions hereinafter provided for, relating to the establishment, change of boundaries, or dissolution of conservation districts.

(4) To secure the co-operation and assistance of agencies of the United States, the commonwealth and its political subdivisions in promoting the organization and operation of conservation districts.

(5) To disseminate information concerning the activities and programs of conservation districts.

(6) To allot money appropriated by the general court for establishing and maintaining conservation districts and for the continuance of their projects and programs.

Added by St.1963, c. 664, § 3.

§ 21. Formation, change of boundaries or dissolution of district; procedure

Whenever the state committee receives a petition signed by at least one hundred land occupiers, herein defined as owners, lessees or tenants in possession, residing within an area proposed for the establishment of a conservation district, or whenever the state committee receives a petition for a change in the boundaries of an existing district from the governing body of the district or districts affected or from a majority of the land occupiers who would be affected by such change of boundaries, or whenever the state committee receives a petition for the dissolution of a district signed by at least one hundred land occupiers residing within the district, the following procedure shall be complied with:

(1) Upon the receipt of such petition, the state committee shall as soon as possible set a date for a public hearing upon the question of the establishment of the district, the change in the boundaries of an existing district, or the dissolution of the district, as the case may be, and shall cause notice to be given of such hearing at least ten days prior to the date set therefor, by publication in a newspaper having general circulation in the area affected. Such hearing shall be held by the state committee within the affected area. All interested parties shall have the right to attend such hearing and to be heard.

(2) If the state committee determines after such hearing that a majority of the land occupiers who would be affected by the organization of the district, the change in the boundaries of the district, or the dissolution of the district, as the case may be, are in favor of the

proposal contained in the petition, and that such proposal is in the best interests of the district or in the public interest, the state committee shall record such determinations; and thereupon the district shall be established, the boundaries of the district changed, or the district dissolved, as may be appropriate.

(3) If a conservation district is dissolved, the supervisors shall forthwith proceed to terminate the affairs of the district and shall dispose of all property belonging to the district as directed by the director. Any sums remaining on hand after payment of district obligations shall be paid into the state treasury and shall be subject for a period of three years to claims against the district or the supervisors acting in their official capacity to the extent that such claims are found valid.

Added by St.1963, c. 664, § 3.

§ 22. Supervisors of districts; appointment; terms; election of successors; vacancies; compensation and expenses

Within sixty days after the state committee has established a conservation district it shall appoint a board of five district supervisors who shall be individual land occupiers residing on or owning land within the district. Supervisors originally appointed hereunder shall serve for terms of one, two, three, four and five years, respectively. Successors shall serve for terms of five years. Successors for full terms of five years shall be elected by the land occupiers in the district. The state committee shall give public notice of each such election by publication in a newspaper published in the district or having a general circulation therein at least ten days prior thereto. The state committee shall prescribe regulations for the conduct of such elections, which elections shall be conducted by the chairman of the state committee or his designated representative. The person receiving the highest number of votes for any office to be filled at such election shall be declared elected. All supervisors shall serve until the qualification of their respective successors. Vacancies shall be filled by the state committee for the unexpired term. District supervisors shall be paid at a rate determined by the director, with the concurrence of the state committee, for each day of actual service rendered and their necessary traveling and other expenses, subject to appropriation.

Added by St.1963, c. 664, § 3.

§ 23. Governing body of districts; advisors

The supervisors of a conservation district shall be the governing body thereof. They shall designate from their membership a chairman and may from time to time change such designation. They may delegate to one or more of their members such powers and duties as they shall deem proper. They shall furnish the director and the state committee, upon request copies of such rules, regulations, orders, contracts, forms and other documents as they shall adopt or employ, and such other information as may be required.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property, for the keeping of records of all proceedings and orders issued or adopted, and for an annual audit of the accounts of receipts and disbursements.

The supervisors may invite the governing body of any political subdivision of the commonwealth, or any department, board or commission thereof, to designate a representative to advise and consult with them on questions of programs and policies which may affect the property, water supply, natural resources conservation or other interests of such political subdivision or agency thereof.

Added by St.1963, c. 664, § 3.

§ 24. Powers and duties of supervisors

The supervisors of a conservation district shall also have the following powers and duties:

(1) To conduct surveys, investigations and research relating to the conservation and development of natural resources, the control and prevention of soil erosion, the prevention of erosion, floodwater and sediment damages, and the conservation, development utilization and disposal of water, and the preventive and control measures needed, to publish the results of such surveys, investigations or research, and to disseminate information concerning such preventive and control measures; provided, that in order to avoid duplication of research activities no district shall initiate any research program except in co-operation with the proper authorities of the commonwealth or its departments, boards or commissions, or with the United States or any of its agencies.

(2) To carry out preventive and control measures within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, and measures for the purposes mentioned in paragraph (1), on lands owned or controlled by the commonwealth or any of its departments, boards or commissions, with the co-operation of the department, board or commission administering and having jurisdiction thereof, and on any other lands within the district at the request or with the consent of the occupier of such land or upon obtaining the necessary rights or interests therein.

(3) To co-operate or enter into agreements with, and within the limits of funds available to the district, including appropriations duly

made by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of measures for any of the purposes mentioned in paragraphs (1) and (2), subject to such conditions as the supervisors may deem necessary.

(4) To acquire and to make available, on such terms as they shall prescribe to land occupiers within the district, necessary machinery, equipment and materials to assist such land occupiers to carry on operations upon their lands for any of the purposes mentioned in paragraphs (1) and (2).

(5) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized by sections eighteen to twenty-five, inclusive.

(6) To develop comprehensive plans for any of the purposes mentioned in paragraphs (1) and (2) which shall specify in such detail as may be practicable the acts, procedures, performances and avoidances which are necessary or desirable for accomplishing such plans, including the specification of engineering operations, methods of cultivation, growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish plans and information and bring them to the attention of occupiers of lands within the conservation district.

(7) To accept contributions or appropriations in money, services, materials, or otherwise, for carrying on their operations, from federal agencies, or from the commonwealth, or any political subdivision thereof, or from any person, firm or corporation.

(8) To sue and be sued in the name of the conservation district; to have a common seal which shall be judicially noticed; to have perpetual succession unless terminated as herein provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of their powers; to make, and from time to time amend or repeal, rules and regulations to carry into effect the purposes and powers of the district.

(9) As a condition to extending any benefits under sections eighteen to twenty-five, inclusive, to, or performing work upon, any lands not owned or controlled by the commonwealth or any of its departments, boards or commissions, the supervisors may ask for contributions in money, services, materials or otherwise to any operations conferring such benefits, and may ask land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as the supervisors deem appropriate.

Added by St.1963, c. 664, § 3.

§ 25. Inter-district co-operation

The supervisors of any two or more districts may co-operate and enter into agreements with one another in the exercise of any or all powers conferred by sections eighteen to twenty-five, inclusive.

Added by St.1963, c. 664, § 3.

DIVISION OF WATER POLLUTION CONTROL

§ 26. Establishment; director

There shall be in the department of environmental quality engineering, subject to the control of the water resources commission, a division of water pollution control hereinafter in this section and in sections twenty-seven to fifty-three, inclusive, called the division. The division shall be headed by a director, appointed by the commission who shall be responsible for carrying out the work of the division under the supervision of the commission. The director shall be qualified by training and experience to carry out the duties of the division. No person may serve as director who receives, or who has during the preceding two years received, ten per cent or more of his income directly or indirectly from persons who are required to obtain discharge permits under section forty-three, and the attorney general upon request may issue guidelines and such opinion as may be necessary to implement this provision.

The director, subject to the approval of the commission, shall employ an assistant director, a counsel for the division who shall be a member of the bar and such other professional, technical and clerical assistants and consultants as may be necessary. The water resources commission may designate a person to act as director in the absence or disability of the director and such acting director shall have all the powers of and perform the duties of the office of the director.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 1; St.1968, c. 648, § 1; St.1969, c. 745, § 1; St.1970, c. 28; St.1973, c. 546, § 1; St.1975, c. 706, § 71.

§ 26A. Definitions

Unless the context otherwise requires, when used in sections twenty-six to fifty-three, inclusive, the following words shall have the following meanings:

"Abatement facilities", facilities for the purpose of treating, neutralizing, or stabilizing sewage and such industrial and other wastes as are disposed of by means of the facilities, including treatment or disposal plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such facilities and sewers, equipment and furnishings thereof and their appurtenances.

"Collection system", each and all of the common lateral sewers and appurtenances of publicly owned treatment works which are primarily installed to receive wastewaters from individual structures or from private property, and which include service connection "Y" fittings and service connections within the boundary of the public way or easement.

"Director", the director of the division of water pollution control, or his authorized delegate or representative.

"District", a district created pursuant to section twenty-eight.

"District commission", the governing body of a district.

"Effluent limitation", a requirement, established under state or federal law, specifying the maximum permissible quantity or concentration of any pollutant that may be present in discharges, or their maximum permissible hydraulic flow, over designated periods of time, to waters of the commonwealth or to a public sewerage system.

"FWPCA", the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et sequens, as amended.

"Hazardous material", includes, but is not limited to, any material, including any discarded or waste material, in whatever form which, because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any other substance or substances, constitutes a present or potential hazard to human health, safety or welfare, or to the environment, when improperly treated, stored, transported, disposed of, or otherwise managed.

"Person", any agency or political subdivision of the commonwealth, public or private corporation or authority, individual, partnership or association, or other entity, including any officer of a public or private agency or organization, upon whom a duty may be imposed by or pursuant to any provision of sections twenty-six to fifty-three, inclusive.

"Pollutant", any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form and whether originating at a point or major nonpoint source, which is or may be discharged, drained or otherwise introduced into any sewerage system, treatment works or waters of the commonwealth.

"Priority list", the ranking, in terms of priority, of projects eligible for funding during a given planning period, which has been established pursuant to the priority system.

"Priority system", the methodology for rating and ranking projects eligible for grant assistance under sections thirty A and thirty-three of this chapter and for establishing priority lists for those projects.

"Public entity", any city, town, special district, the metropolitan district commission or other existing governmental unit eligible to receive a grant for the construction of treatment works from the United States Environmental Protection Agency pursuant to Title II of the FWPCA, as amended.

"Treatment works" and "facilities", any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants.

"Waters" and "waters of the commonwealth", all waters within the jurisdiction of the commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, coastal waters and groundwaters.

Added by St.1973, c. 546, § 2. Amended by St.1979, c. 557, § 1; St.1979, c. 705, § 1.

§ 27. Powers and duties of division

It shall be the duty and responsibility of the division to enhance the quality and value of water resources and to establish a program for prevention, control, and abatement of water pollution. Said division shall:

(1) Encourage the adoption and execution by cities and towns, industries and other users of the waters of the commonwealth, and by cooperative groups of municipalities and industries, of plans for the prevention, control and abatement of water pollution.

(2) Cooperate with appropriate federal agencies or the agencies of other states, or with interstate agencies in matters related to water quality control, and shall receive and dispense such funds from any such agencies as may be available for the prevention, control and abatement of water pollution. Said division shall also cooperate with and assist departments, boards, officials and institutions of the commonwealth or its political subdivisions that may be concerned in any way with problems of water pollution.

(3) Take all action necessary or appropriate to secure to the commonwealth the benefits of the Federal Water Pollution Control Act, Public Law 92–500, as amended,[1] and other federal legislation pertaining to water pollution control.

(4) Conduct a program of study and research and demonstration, by itself or in cooperation with other governmental agencies, relating to new and improved methods of pollution abatement or more efficient methods of water quality control, including the treatment, neutralization and stabilization of sewage and industrial waste and the disposal thereof by treatment or disposal plant, sewer systems, pumping stations, or acceleration flow or by other methods, facilities or equip-

ment so as to insure cleaner waters in the coastal waters, rivers, streams, lakes and ponds of the commonwealth.

(5) Adopt standards of minimum water quality which shall be applicable to the various waters or portions of waters of the commonwealth. Standards relating to the public health shall not be adopted without the approval of the commissioner of public health.

(6) Prescribe effluent limitations, permit programs and procedures applicable to the management and disposal of pollutants, including, where appropriate, prohibition of discharges.

(7) Require dischargers to establish monitoring, sampling, record keeping and reporting procedures and facilities, and to submit to the director data gathered therefrom and such other data as he shall reasonably request for purposes of carrying out this chapter. The director may make such data, and any data obtained pursuant to the provisions of section forty, available to other government agencies concerned with the protection of public waters or water supplies, and to the public for inspection and copying, except that he shall not permit disclosure, other than to another government agency as provided in the preceding clause, of any information, other than effluent data, obtained by or submitted to him pursuant to any provision of this chapter, upon a showing, satisfactory to him, that such information if made public would divulge methods or processes entitled to protection as trade secrets of any person.

(8) Examine periodically the water quality of the various coastal waters, rivers, streams, lakes and ponds of the commonwealth, or separate portions of such waters, and publish the results of such examinations together with the standard of water quality established for the various waters or portions thereof.

(9) Adopt regulations requiring proper operation and maintenance of waste treatment facilities.

(10) Conduct a continuing planning process which will result in plans for reducing, controlling and eliminating discharges to all waters of the commonwealth, and prepare or supervise the preparation of, and adopt, comprehensive river basin and regional plans for abatement of such discharges by means of treatment works or other practical control facilities and methods. No such facility or method shall be approved for a construction grant under section thirty-three or for a permit under section forty-three unless it is in conformity with any applicable plans adopted by the division.

(11) Arrange for personnel engaged in the work of water pollution prevention and abatement to take courses designed to instruct employees of water pollution control facilities, including sewage treatment and disposal systems, in the latest and most efficient methods of water pollution control and the latest developments in the operation

and maintenance of plants and facilities for the prevention or abatement of water pollution.

(12) Adopt, amend or repeal after hearing from time to time, with the approval of the water resources commission, rules and regulations which it deems necessary for the proper administration of the laws relative to water pollution control and to the protection of the quality and value of water resources, including regulations to control or prevent the discharge of sewage, garbage or other waste material from watercraft of any type, including houseboats. Such rules and regulations as shall relate to the public health shall not be adopted without the written approval of the commissioner of public health.

(13) Require submissions for approval of reports and plans of abatement facilities or any part thereof, and inspect the construction thereof for compliance with the approved plans.

(14) Undertake immediately whenever there is spillage, seepage or other discharge of oil or hazardous material into or proximate to any of the waters of the commonwealth or into any offshore waters which may result in damage to the waters, shores or natural resources utilized or enjoyed by citizens of the commonwealth to cause said spillage, seepage or discharge to be contained and removed by whatever method it considers best. Chemicals shall not be used in the cleanup operation of oil or hazardous material spills unless their use has been authorized by the division, and public water supply or shellfish beds may be affected, by the department of public health. In this clause, the word "oil" shall mean insoluble or partially soluble oils of any kind or origin or in any form including, but not limited to, crude or fuel oils, lube oil or sludge, asphalt, insoluble or partially insoluble derivatives of mineral, animal or vegetable oils.

The division shall determine the person responsible for causing such spillage, seepage or discharge and the names of all persons who owned or controlled the oil or hazardous material or who owned or controlled or leased the vessel, tank, pipe, hose or other container in which the oil or hazardous material was located when the spillage, seepage or discharge occurred. Said persons shall be jointly and severally liable to the commonwealth for all costs and expenses incurred by the division in making such investigation, and in containing and removing the oil or hazardous material, and shall be jointly and severally liable to the commonwealth for all damages done to natural and recreational resources, including all costs of restoring damaged areas to their original condition, and to any other person for any damages to his real and personal property. The person responsible for causing such spillage, seepage or discharge shall be punished by a fine of not more than ten thousand dollars for each day such spillage, seepage or discharge continues, or by imprisonment for not more than two years or both.

Upon request of the director, the attorney general shall bring an action to recover all costs and expenses incurred for such investigation, containment, removal, and restoration.

Such costs and expenses shall be recovered in an action of tort, and shall be credited to the account from which said sums of money had been advanced and may, subject to appropriation, be expended by the division for the purposes set forth in this clause. In any such action the commonwealth may also seek recovery for all loss and damage to the natural and recreational resources of the commonwealth.

Any owner or operator of a vessel, vehicle, railroad car or facility used for the production processing, transportation, transfer or storage of oil or hazardous material shall, as soon as he has knowledge of any such spillage, seepage or discharge of oil or hazardous material into or proximate to waters of the commonwealth, promptly notify the director of the division or his representative of such discharge. Any person who fails so to notify the director or his representative of such discharge shall be punished by a fine of not more than five thousand dollars.

Any person who removes oil as defined in this clause, or hazardous material, as defined in section twenty-six A, from the waters of the commonwealth or adjoining shorelines shall be entitled to reimbursement from any other person for the reasonable costs expended for such removal, if such oil or hazardous material resulted from the negligence of two or more persons, each shall be liable to the others for his pro rata share of the costs or removal.

Any person who gratuitously renders assistance at the request of a duly authorized officer in removing oil or hazardous material from the waters of the commonwealth or adjoining shorelines shall not be held liable, notwithstanding any other provision of law, for civil damages as a result of any act of omission by him in removing such oil or hazardous material, except acts or omissions amounting to gross negligence or willful or wanton misconduct.

Any owner or operator of a vessel, vehicle, railroad car or facility used for the production, processing, transportation, transfer or storage of oil shall, as soon as he has knowledge of any such spillage, seepage or discharge of oil into or adjacent to waters of the commonwealth, promptly notify the director of the division or his representative of such discharge. Any person who fails so to notify the director or his representative of such discharge shall be punished by a fine of not more than five thousand dollars.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 2; St.1968, c. 648, § 2; St.1970, c. 693, § 1; St.1970, c. 704, § 1; St.1970, c. 827, § 1; St.1973, c. 546, § 3; St.1979, c. 705, § 2.

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[1] 33 U.S.C.A. § 1251 et seq.

§ 28. Water pollution abatement districts; establishment; dissolution; enlargement or consolidation; joint action; application of law

(*a*) The division is hereby authorized, with the approval of the water resources commission, to propose water pollution abatement districts consisting of one or more cities or towns, or designated parts thereof, for the purposes set forth in section thirty. The district so proposed shall be deemed to be established after approval by the city or town, or designated parts thereof, proposed for inclusion in the district or upon the mandatory formation of the district in accordance with the provisions of subsection (*b*).

(*b*) Within ninety days of receipt by any city council of a proposal by the division, approved by the commission, that a water pollution abatement district which includes such city be established, said city council shall consider said proposal and indicate its approval or disapproval by voting by yeas and nays upon a question in substantially the following form:—"Shall there be established a water pollution abatement district as recommended by the division of water pollution control and approved by the water resources commission, to include the city (cities) of (herein name of city or cities so proposed for inclusion) and the town (towns) of (herein name of town or towns proposed for inclusion in part) and the construction, acquisition, extension, improvement, maintenance and operation of a system of water pollution abatement facilities by the said district in accordance with the provisions of chapter twenty-one of the General Laws?" Within ninety days of receipt by the selectmen of any town of a proposal by the division, approved by the commission, that a water pollution abatement district which includes such town or a part of such town be established, said selectmen shall cause to be presented for determination by vote, with printed ballots at an annual town meeting or a special town meeting called for the purpose, the question of approving said proposal, which question shall be in substantially the form set forth above. If the proposed district includes a part or parts of a town, the said selectmen shall call a special meeting for the purpose of approving the proposal at which only registered voters resident in that part or parts of the town proposed to be included in the district may vote. The warrant for such meeting shall be signed by at least a majority of the selectmen of the town and be posted in not less than two public places in said part or parts of the town at least seven days before the day of the meeting and the moderator of the town shall preside at such meeting and the town clerk shall keep the records thereof. Whenever within said ninety days each city and town or part thereof proposed for inclusion in said district shall have indicated its approval of the proposed district by vote in the affirmative on said question in the manner described in this subsection, the district shall be deemed to be established.

In the event that the city or town or designated parts thereof proposed by the division for inclusion in a district fails to vote in the affirmative on said question within the ninety day period, the director shall order a hearing under the provisions of chapter thirty A. Upon completion of said hearing, the director may, upon finding that the creation of said district is necessary for the prompt and efficient abatement of water pollution, and with the approval of the water resources commission, declare the mandatory formation of the district.

(*c*) An established district may be dissolved only by act of the general court. The division, with the approval of the commission, may from time to time propose the enlargement of a district or the consolidation of two or more districts, subject to approval by the general court or approval in the manner provided in subsection (*b*).

In the event that the enlargement or consolidation involves a district formed mandatorily as provided in subsection (*b*), the director shall order a hearing under the provisions of chapter thirty A. Upon completion of the hearing, the director may, upon finding that the formation of said district is necessary for the prompt and efficient abatement of water pollution, and with the approval of the water resources commission, declare the enlargement or consolidation on the part of such district.

(*d*) If the division deems water pollution abatement necessary, but the benefits of such abatement are likely to be increased, or its costs to the commonwealth reduced by joint action with another state or states contiguous to the commonwealth, it shall report said fact to the water resources commission which shall consult with the appropriate agency of such other state or states on such matters and shall make recommendations to the general court in relation thereto.

(*e*) The provisions of subsections (*b*) and (*c*) of this section, of sections twenty-nine, thirty, thirty-two, thirty-five and thirty-six shall apply only to a district or district commission created pursuant to this section, and to any city, town or portion thereof which is a member of such district.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 3; St.1973, c. 1074, §§ 1 to 3; St.1979, c. 557, § 2.

§ 29. Status of district; district commission; membership; executive director; treasurer; personnel

Each district shall be a body politic and corporate and shall have a commission to be known as the district commission.

Except as provided in the following paragraph, the district commission shall consist of two members from each town included in whole or in part in the district selected by the board of selectmen of such town and two members from each city included in the district selected by the city council. If only part of a town is included in the district, at least one of the two members so selected shall, unless impracticable, be a resident in the part so included; provided, however, that whenever a town or city has a population exceeding twenty thousand persons resident within such district, the board of selectmen or the mayor, but in the case of the city having a Plan D or Plan E charter the city manager, shall, if the resident population does not exceed fifty thousand persons, designate one additional person, or, if it exceeds fifty thousand persons, two additional persons, to serve as members of the district commission.

In the event of the formation of a mandatory district, the district commission shall consist of three members appointed by the director, with the approval of the water resources commission.

Each member of the commission shall be sworn and shall serve for three years or until his successor is selected and qualified.

The district commission shall employ a registered professional engineer who shall be the executive director of the district, and a person with accounting and financial experience who shall be the treasurer of the district, and shall fix their respective salaries. Said director shall be the executive and administrative head of the district, and the treasurer shall give a bond for the faithful performance of his duties in an amount required by the director.

The executive director may, with the approval of the district commission, employ such other persons as he shall deem necessary, and such persons shall be subject to the provisions of chapter thirty-one.

Added by St.1966, c. 685, § 1. Amended by St.1970, c. 150; St.1972, c. 601, § 1; St.1973, c. 1074, §§ 4, 5.

§ 30. Powers of district commission

A district commission (1) may act by a majority vote of the full commission, (2) shall adopt by-laws and regulations for the conduct of its affairs, (3) shall adopt a name and a corporate seal, (4) may sue and be sued, (5) may enter into contracts, (6) may incur expenses in order to carry out its purposes, (7) may issue bonds and notes as hereinafter provided, (8) may acquire, dispose of and encumber real and personal property for the purposes of the district, (9) may manage, control and supervise abatement facilities, (10) may construct, acquire, improve and maintain and operate abatement facilities, (11) may exercise the power of eminent domain under chapter seventy-nine, (12) shall provide revenue to carry out the purposes of the district, in accordance with sections thirty-five and thirty-six, (13) may apply for, accept and receive financial assistance from the federal government and from the commonwealth.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 4; St.1972, c. 601, § 2; St.1979, c. 557, § 3.

§ 30A. Financial assistance for construction of collection systems

The division may make grants to public entities for the costs of constructing collection systems. Subject to appropriation, such grants shall be made in accordance with the priority system and list established for this section by regulation of the director, and, in no event, shall exceed forty per cent of the construction costs of such projects, as determined by the division. No project shall be eligible for a grant under this section unless the abatement facilities to which the project facilities would be added have been constructed or have received a grant for construction under section thirty-three. No project shall be eligible for a grant under this section if the sewage flows to be added by the use of the project facilities would result in or contribute to a condition in violation of this chapter, or any regulation, permit or order issued or adopted thereunder. No grant made under this section shall exceed one million dollars. Any public entity which receives a grant under this section shall not be eligible to receive another such grant until two years shall have elapsed from the date of the acceptance of any such grant by the public entity.

In determining the amount of financial assistance to be granted to a public entity pursuant to this section, the costs of construction of the collection system shall be the actual costs thereof as determined by the division, or the estimated reasonable costs thereof as determined by the division, whichever is lower. Payments of financial assistance by the commonwealth pursuant to this section shall be made in accordance with a payment schedule established by the division with the approval of the commissioner of administration.

Added by St.1967, c. 873, § 5. Amended by St.1973, c. 546, § 4; St.1979, c. 557, § 4.

§ 31. Development of comprehensive water pollution abatement plan; planning grant

A public entity may apply to the division for a planning grant by the commonwealth for the purpose of assisting the public entity in developing a comprehensive water pollution abatement plan for such public entity. Upon approval by said division, the division may grant for such purpose, a sum not to exceed fifteen thousand dollars. In no case shall a grant exceed the reasonable and necessary cost of such planning, after subtracting therefrom any federal grant made to such public entity for the same purpose. The division may direct that such planning be undertaken in such manner as to maximize federal reimbursement, or to minimize the cost to the commonwealth, including, in appropriate cases, metropolitan-wide comprehensive planning and programming for co-ordinating activities affecting the development of the area. Planning grants authorized under this section need not be repaid to the commonwealth, and shall be in addition to financial assistance made available under other sections of this chapter.

Added by St.1966, c. 685, § 1. Amended by St.1979, c. 557, § 5.

§ 32. Presentation of plan to division; contents; approval

A district shall present a plan for abatement of water pollution to the division within one year after its establishment or such greater or lesser period as the division may prescribe. Such plan shall include detail as to the sources of pollution within the district, the means by which and the extent to which such pollution is to be abated, a project or projects for the construction, acquisition, extension or improvement of facilities required by the plan, estimates of the capital outlay costs thereof, the amount of federal grants applicable to such costs for which the district proposes to apply, the method of apportioning among the several cities and towns and parts thereof in the district the amounts required by the district for the payment of capital outlay costs incurred by it for such capital outlays, the method of apportioning among the several cities and towns and parts of towns in the district the maintenance and operating costs incurred by it in maintaining and operating the facilities, as provided in section thirty-six, or, instead of such apportionment, the method whereby the district may provide for the payment in whole or in part of such maintenance and operating costs by establishing and collecting reasonable and equitably classified charges for the use of the services provided by the facilities, and such other information as the division shall require. After approval, a plan may be altered only with the approval of the division.

Plans submitted under this section shall make provision for securing compliance with any applicable requirements of state or federal law concerning payment by industrial users of their proportional shares of the costs of constructing, operating and maintaining treatment works and services to be made available to such users. Every district is hereby authorized to contract, as may be appropriate, with present or prospective users of its facilities concerning terms and conditions of their use, conformably with applicable provisions of law. Every district is hereby further authorized to meet its expenses through assessments of equitable and proportional user charges in the same manner as cities and towns in a district may do under the second paragraph of section thirty-six.

The division shall not approve a plan unless it finds that such plan includes a method or formula for apportioning among the several cities and towns and parts of towns in the district the amounts required by the district for payment of both capital outlay costs and maintenance and operating costs which the division deems just and equitable. Such a formula may consist in whole or in part of fixed percentages assigned to each city, town or part of a town within the district as their respective shares of the amounts required by the district or may be based in whole or in part upon any one or a combination of two or more of the following factors: (*a*) population; (*b*) equalized valuation; (*c*) flow and characteristics of the wastes contributed; (*d*) any other factor deemed appropriate for the purpose by the division.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 6; St.1972, c. 601, § 3; St.1973, c. 546, § 5.

§ 33. Financial assistance for abatement facilities

The division may make a grant to a public entity for the eligible costs of a planning, design or construction project for abatement facilities where the federal government has awarded the public entity a grant pursuant to Title II of the FWPCA, as amended.

Where the federal government has awarded a seventy-five per cent grant for the eligible costs of the project, the division may award a fifteen per cent grant for such eligible project costs. Where the federal government has awarded an eighty-five per cent grant for the eligible costs of the project, the division may award a nine per cent grant for such eligible project costs.

Payments of financial assistance by the commonwealth pursuant to this section shall be made in accordance with a payment schedule established by the division with the approval of the commissioner of administration. The division may require any information from the public entity necessary to ensure that the public entity is complying with the conditions of the grant awarded for the project, and the division may withdraw its approval of the project if such information is not supplied or if the public entity is not complying with the conditions of the grant. Nothing in this section shall be construed to prevent the division from conditioning the grant of financial assistance under this section, or section thirty A or thirty-one upon the establishment of a district or other intermunicipal arrangement for the purpose of abating water pollution.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 7; St.1973, c. 546, § 6; St.1979, c. 557, § 6.

§ 33A. Financial assistance in towns of more than 20,000 inhabitants

Notwithstanding the provisions of section thirty-three, if a town having a population of more than twenty thousand inhabitants according to the latest federal census, has received a grant from the division equal to sixty per cent of the cost of construction, the division shall make an additional grant to said town to ensure a total of ninety percent federal and state funding on the eligible portions of the project or projects of said town.

Added by St.1973, c. 744.

§ 33B. Engineering reports of plans for facilities; failure of governmental units to submit as ordered; preparation by director; distribution of costs

If any city, town or special district, or other existing governmental unit authorized to construct, own, operate, extend or improve abatement facilities as defined in section thirty, fails to comply with an order of the director to submit a preliminary engineering report of final engineering plans to the division for approval, the director may, with the approval of the water resources commission, act in behalf of such city, town, special district, or other existing governmental unit to prepare or cause to be prepared a preliminary engineering report or final engineering plans. Where more than one city, town or portion thereof is included in a district, the costs shall be distributed between or among such cities and towns according to a formula established by the division of water pollution control.

Nothing in this section shall be construed to prevent any city, town, special district, the metropolitan district commission, or other existing governmental unit who fails to comply with an order of the director from being eligible for financial assistance from the commonwealth and from the United States government.

Added by St.1973, c. 1074, § 6.

§ 33C. Action by director pursuant to section 33B; contract for engineering reports authorized

When it is necessary for the director of the division of water pollution to take the action referred to in section thirty-three B, said director may, with the approval of the water resources commission, contract for engineering reports or final plans from existing bond issues.

Added by St.1973, c. 1074, § 6.

§ 33D. Director authorized to order governmental units to construct facilities

In order to prevent or reduce discharges to the waters of the commonwealth or to implement comprehensive basin or regional plans approved by the division of water pollution control, the director of the division may order the appropriate municipalities, districts and other competent public entities to construct the necessary facilities for which construction grants are authorized under section thirty-three in accordance with timetables for compliance specified in the orders.

Added by St.1973, c. 1074, § 6.

§ 34. Supervision of operation and maintenance of treatment works

The division shall supervise the operation and maintenance of treatment works within the commonwealth, and the director may require the person owning and operating such facilities to maintain the facilities in conformance with the provisions of this chapter and any regulations, permits, licenses or orders issued thereunder, and in conformance with applicable federal law and regulations.

Added by St.1966, c. 685, § 1. Amended by St.1979, c. 557, § 7.

§ 35. General obligation serial bonds or notes; temporary notes; indebtedness

The district by vote of the commissioners is authorized to issue, from time to time, general obligation serial bonds or notes of the district to pay for its share of the costs of capital outlay required in connection with the project or projects contained in an approved plan, in such amount or amounts as the district commissioners may determine and as may be approved by the division, and may refund any such serial bonds or notes. Such serial bonds or notes may be callable with or without premium, shall contain such terms and conditions, bear such rate or rates of interest, be sold in such manner, as public or private sale, and mature at such times and in such amounts as the commissioners shall determine; provided, however, that each issue of such bonds or notes shall be payable in annual installments, the first of which shall be payable not later than three years after its date and the last of which shall be payable not later than thirty years from said date.

If the district votes to issue serial bonds or notes, the commissioners may authorize the issuance, in the name of the district, of general obligation temporary notes for a period of not more than two years in anticipation of the money to be received from the sale of such serial bonds or notes; but the time within which such serial notes or bonds shall become payable shall not be extended by reason of the making of such temporary loans beyond the time fixed in the vote authorizing such serial bonds or notes.

The district by vote of the commissioners is authorized to issue, from time to time, general obligation temporary notes of the district in anticipation of assessments and other revenues of the district of the year in which such notes are issued. Temporary notes in anticipation of assessments or other revenues shall be payable not more than one year from their dates. If at any time any principal or interest is due or about to become due on any bond or note issued by a district and funds to pay the same are not available, the district may temporarily borrow money and issue temporary general obligation notes of the district, payable not more than one year from their dates, to pay such principal and interest.

Temporary notes issued under this section for a shorter period than the maximum permitted may be renewed by the issuance of other temporary notes maturing within the required period; provided, that the period from the date of issue of the original temporary note to the date of maturity of the renewal note shall not exceed the maximum period for which the original temporary note may have been issued. Such temporary notes or renewal notes may be sold at discount or with interest payable at or at and before maturity.

Notes or bonds authorized by this section shall be signed by the treasurer and countersigned by the executive director of the district and serial notes and bonds shall have the district seal affixed. Section sixteen B and sixteen C of chapter forty-four shall be applicable to such bonds and notes.

Indebtedness incurred under this section shall not be included in computing the limit of indebtedness of any city or town any portion of which is included in a district.

Added by St.1966, c. 685, § 1. Amended by St.1979, c. 557, § 8.

§ 36. Amounts necessary for payment of bonds and notes and maintenance of district; determination; apportionment of costs; schedule of charges

The district commission shall annually determine the amounts required for the payment of principal and interest on such bonds and notes issued or to be issued by the district which will be due during the ensuing calendar year and shall apportion the amounts so determined among the several cities and towns or parts thereof in the district in accordance with the provisions of the plan approved under section thirty-two. The district commission shall also annually determine the amounts necessary to be raised to maintain and operate the district during the said year, for capital outlay items the cost of which is not to be funded, and for all other matters for which the district is required to raise money, and if and to the extent said plan so requires shall apportion among the several cities and towns or parts thereof the amounts so determined in accordance with the provisions of the said plan reduced by the amounts of revenues of funds which are available or are to be received by the district during said year and are applicable to costs of maintenance and operations. Each amount so apportioned for each city or town or portion thereof shall prior to December thirty-first, in each year, be certified by the district commission to the assessors of each city and town included in whole or in part in the district. The assessors of each such city and town shall without further vote include each amount so certified in those amounts to be annually raised by taxes under section twenty-three of chapter fifty-nine; provided, however, that in the event only a part of a town is within the district, the assessors shall assess a tax to the amounts so certified only on the property within such part. The respective city or town treasurers shall pay the amount so certified to the treasurer of the district in four substantially equal payments, to be made on or before the first day of March, June, September and December.

A city or town in a district may raise all or a portion of the amounts certified annually by the district to the assessors of such cities and towns as provided in the preceding paragraph, through equitable and proportional charges against inhabitants, corporations, and other users for the services rendered by the district in each such city or town. For the purpose of establishing an equitable and proportional schedule or reasonable charges, the property benefited by the services of the district may be classified taking into consideration the volume of water, including surface or drain waters, the character of the sewage or industrial or other wastes, and the nature of the use made of the sewerage system, including the facilities. The charges may include standby charges to property not connected but for which the district's facilities have been made available.

The schedule thus established may be modified in accordance with the plan and as may be necessary to raise the amounts required by the district. The failure of such user charges to raise the amounts required by the district in any year shall not relieve any city or town from its obligation to provide the amounts assessed by the district hereunder.

If a city or town fails to pay the district commission the apportioned amount, the commissioner of corporations and taxation is authorized and directed to pay to the district commission such amounts from the city's or town's share of monies distributed by the commonwealth on an annual basis.

Added by St.1966, c. 685, § 1. Amended by St.1973, c. 1074, § 7.

§ 37. Reimbursement for costs of water pollution abatement project

The metropolitan district commission, or any city, town or other political subdivision which prior to the sixth day of September, nineteen hundred and sixty-six had constructed or had under construction a water pollution abatement project which qualifies as an approved project as hereinbefore provided, and which project was financed in whole or in part by the proceeds of serial bonds or notes issued on or after December thirty-first, nineteen hundred and fifty-seven, under any general law or special law, shall be annually reimbursed by the commonwealth in an amount equal to thirty per cent of the principal payments of such serial bonds or notes maturing each year beginning January first, nineteen hundred and sixty-eight; provided, however, that if grants under any federal law on or after January first, nineteen hundred and fifty-six, have exceeded thirty per cent of such project's construction cost, the percentage of the principal payments to be paid by the commonwealth shall be reduced by the number of percentage points by which the federal grant exceeded thirty per cent. Reimbursements under this section shall be paid from amounts appropriated therefor from the Local Aid Fund under section eighteen A of chapter fifty-eight.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 8.

§ 38. Research and demonstrations

The director shall provide for conduct of research and demonstration projects relating to water pollution control, including but not limited to new and improved methods of controlling the discharge into any waters of untreated or inadequately treated sewage, stormwater, or industrial or other waste or chemical, radioactive, flammable, explosive or other waste hazardous to the public or its environment, and to so provide may contract with, for special studies, individuals, partnerships, corporations, state agencies, private and public institutions. The director may also contract for the development of comprehensive river basin, water quality management, or waste treatment management plans.

The director may enter into agreements with the federal government and the New England Interstate Water Pollution Control Commission for the planning, acquisition and construction of the necessary facilities for such research and demonstration projects and he may contribute to the cost thereof and receive and expend federal or other funds for this purpose in addition to the sums otherwise available for such purposes. The director shall provide for in-service training programs in methods of water pollution control, in accordance with the provisions of section twenty-eight A of chapter seven. He shall also conduct or support programs for the training of waste treatment plant operators.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 9; St.1970, c. 692, § 1; St.1972, c. 678.

§ 38A. Clean waters scholarship intern program

There shall be in the division a clean waters scholarship intern program which shall be administered by the director.

The director, subject to appropriation and grants from other sources, may grant scholarships providing for the payment of room, board, tuition and other fees to any person who is eligible to attend an accredited college or university and who enrolls at such college or university in a course of study leading to an engineering degree satisfactory to the director. In no event shall any student receive such scholarship aid for more than four years.

To be eligible for such scholarship a person shall (1) be a citizen of the United States and a resident of the commonwealth; (2) be a high school graduate or have an equivalent education; (3) have been accepted for admission as a regular student in an accredited college or university approved by the director to pursue a course of instruction satisfactory to the director; (4) contract, with the consent of his parent or legal guardian if he is a minor, with the director or his designated representative, to serve with the division for a period of three years following his graduation, and to serve with the division during the regular periods of summer vacation while attending such college or university except for such vacation periods as the director may establish by regulation; provided however, that the division shall not be liable to pay wages to said student during said vacation periods. Service rendered to the division by a recipient of such a scholarship during the three year period following his graduation, and during the regular periods of summer vacation, and such other vacation periods as the director may establish, shall not be subject to the provisions of chapter thirty-one.

The director may, subject to available appropriations and grants from other sources, establish within the division a program of graduate study for eligible persons wishing to attend any accredited graduate program at a college or university in order to further the training of personnel for the more efficient administration of sections twenty-six to fifty-three, inclusive.

The scholarship awards or aid granted by the director under this section shall be on a competitive basis.

The director may adopt such rules and regulations as he deems necessary to carry out the programs authorized by this section.

Added by St.1968, c. 611. Amended by St.1969, c. 745, § 2.

§ 39. Reservoirs

The water resources commission may, from the proceeds of bond issues authorized for water pollution control, construct or expand reservoirs at locations throughout the commonwealth for the purpose of providing low flow augmentations in time of drought and in such other times as rivers and streams may require additional water flow to carry off treated effluents discharged into said rivers and streams. The commission, in behalf of the commonwealth, may take by eminent domain under chapter seventy-nine or acquire by purchase, gift, or otherwise any land, water rights, or other easements, public or private, necessary for accomplishing the purpose of this section; provided that no taking may be made of water which is used for municipal, agriculture or industrial water supply purposes. The commission may enter into agreements with any federal agency to accept any federal grants that may be available for the aforesaid purpose. Such a reservoir shall not be used for public water supply purposes unless its location, design, and operation, and any subsequent treatment or purification shall be approved by the department of public health.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 10.

§ 40. Entry upon property; investigation or inspection; examination of records; removal, etc., of hazardous materials

The director, his authorized representative, or personnel of the metropolitan district commission may enter at reasonable times any property, public or private, for the purpose of investigating or inspecting any condition relating to the discharge or possible discharge of pollutants and may make such tests as may be necessary to determine the existence and nature of such discharge; provided, however, that personnel of the metropolitan district commission may investigate or inspect only such conditions as affect the waters and waterways under the care and control of said commission. He may inspect any monitoring equipment or procedure required by the terms of a permit issued under section forty-three. The director or his authorized representative may examine any records pertaining to operation of treatment works, and any records required to be kept by the terms of a permit issued under said section forty-three.

In carrying out its responsibilities under clause (14) of section twenty-seven as to the spillage, seepage or discharge of oil, the division or its authorized contractors, upon a finding by the director that a spillage, seepage or discharge of oil constitutes a present or potential threat to the public health, safety or the environment, may enter upon any property, public or private, and may provide for the removal, neutralization, containment, treatment and disposal of such oil as may be found thereon. In carrying out its responsibilities under said clause (14), as to the spillage, seepage or discharge of hazardous materials, the division or its authorized contractors, upon a finding by the director approved by the commissioner of environmental quality engineering that a spillage, seepage or discharge or hazardous materials constitutes a present or potential threat to the public health, safety or the environment, may enter upon any property, public or private, and may provide for the removal, neutralization, containment, treatment and disposal of such hazardous materials.

Added by St.1966, c. 685, § 1. Amended by St.1973, c. 546, § 7; St.1975, c. 204; St.1979, c. 705, § 3.

§ 41. Recommendations by water resources commission

The water resources commission shall from time to time recommend to the governor and the interstate water pollution control commission programs for interstate river basin water quality control and water pollution abatement, and for interstate compacts with neighboring states to effectuate a river basin approach to water quality control, which programs and compacts shall be aided by federal grants available for the purpose.

Added by St.1966, c. 685, § 1.

§ 42. Discharge into waters; violations of chapter, regulation, order or permit; false representations; tampering with monitoring device or method; criminal and civil penalties

Any person who, directly or indirectly, throws, drains, runs, discharges or allows the discharge of any pollutant into waters of the commonwealth, except in conformity with a permit issued under section forty-three; or who violates any provision of this chapter, any valid regulation, order or permit prescribed or issued by the director thereunder; or who knowingly makes any false representation in an application, record, report or plan, or falsifies, tampers with or renders inaccurate a monitoring device or method, required under this chapter, (*a*) shall be punished by a fine of not less than two thousand five hundred dollars nor more than twenty-five thousand dollars for each day such violation occurs or continues, or by imprisonment for not more than one year, or by both; or (*b*) shall be subject to a civil penalty not to exceed ten thousand dollars per day of such violation, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction.

Nothing in this chapter shall be construed as adversely affecting the rights of any person to secure judicial relief against actual or potential waste discharges under other rules or provisions of law.

No information submitted or made available for inspection in accordance with requirements established by or under this chapter may be used in any criminal proceeding against the individual who submits it, certifies it, or makes it available, except in a prosecution for the making of a false statement or record, or for otherwise failing to comply with reporting or recording requirements under this chapter.

Added by St.1966, c. 685, § 1. Amended by St.1967, c. 873, § 11; St.1970, c. 704, § 2; St.1973, c. 546, § 8.

§ 43. Permit proceedings and determinations; regulations; necessity and requirements of permit; application; forms; fees

(1) For purposes of this section, "permit proceeding" includes the consideration of any application for a permit and of any proposal or request to suspend, revoke, modify or renew a permit. "Permit determination" means the decision of the director upon such application, proposal or request.

(2) No person shall discharge pollutants into waters of the commonwealth nor construct, install, modify, operate or maintain an outlet for such discharge or any treatment works, without a currently valid permit issued by the director. No person shall engage in any other activity that may reasonably be expected to result, directly or indirectly, in discharge of pollutants into waters of the commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection, without a currently valid permit issued by the director, unless exempted by regulation of the director.

(3) The director shall adopt regulations with respect to permit proceedings and determinations. Applications for permits shall be submitted within times and on forms prescribed by the director and shall contain such information as he may require.

(4) Public notice of every permit proceeding, including proceedings under paragraph (10), shall be given in the manner provided by section three of chapter thirty A. The director shall circulate information received concerning the matter pending in accordance with the provisions of clause (7) of section twenty-seven and may hold a public hearing if he deems such hearing to be in the public interest. If the applicant or permittee requests a hearing, the director shall hold a public hearing on the matter in a community within the affected area of the discharge, at least thirty days after giving notice thereof. The director may, upon request of a permittee, revise a schedule of compliance in an issued permit if the director determines that good and valid cause, for which the permittee is not at fault, exists for such revision, and in such cases the provisions of this paragraph for public notice and hearing shall not apply. If the director has proposed to suspend or revoke a permit, in whole or in part, pursuant to paragraph (10), and if the permittee requests an adjudicatory hearing under section forty-five on the proposed determination, the requested hearing may be held as part of the public hearing to be afforded under this paragraph.

(5) The director shall grant a permit only if the discharge and the treatment works proposed in an initial or an amended application

will, in his judgment, conform to effluent limitations specified in the permit, and will conform to regulations, receiving water standards and comprehensive plans adopted by the division. The director shall issue any permit proposed for issuance under this section providing it conforms to all applicable provisions of federal law and of rules and regulations promulgated thereunder.

(6) The director shall establish by regulation standard and short application forms for discharge permits and rules governing the filing of such forms by the various categories of applicants.

(*a*) Upon submission of an application short form to the director, an applicant shall pay a fee of ten dollars;

(*b*) Upon submission of an application standard form to the director, an applicant shall pay a fee of one hundred dollars, and if there is more than one outlet from which the discharge will flow, an additional fifty dollars shall be paid for each additional outlet up to a maximum amount of five hundred dollars. Any applicant submitting an application standard form who has previously filed an application short form may deduct from the fee submitted the amount previously submitted with the short form;

(*c*) Fees for the renewal of permits shall be the same as the initial application fee. Any new or increased discharges of pollutants, however, shall be reported in the appropriate application form. Agencies or instrumentalities of federal, commonwealth, or local governments shall not be required to pay any fee to the commonwealth in connection with the filing of an application.

(7) Every permit shall specify effluent limitations, interim and final deadlines where appropriate for compliance, the term for which the permit is issued, which may not be in excess of five years, and such requirements of proper operation and maintenance, monitoring, sampling, recording, reporting, and inspection as the director may prescribe. Permits may specify additional requirements, including technical controls and other components of treatment works to be constructed or installed, and provisions for insuring payments of user charges, which the director deems necessary to safeguard the quality of the receiving waters or to comply with pertinent provisions of the laws of the commonwealth or of federal law.

(8) A permit for a discharge to publicly owned treatment works shall require any user to comply with pretreatment standards and other safeguards which the director may require to prevent excessive or improper waste loadings. With the approval of the director, a municipality, a district or other public agency operating treatment works may administer, in whole or in part, the system of permits that shall regulate discharges to those works.

(9) A permit for a discharge from publicly owned treatment works shall require the applicant to have in effect or to establish without delay, and to enforce, an adequate sewer ordinance that prohibits introduction of incompatible wastes and slug loadings into the works, and that requires pretreatment where appropriate. A permit granted under this section shall require the permittee to monitor and report periodically to the director upon waste flows to the treatment works, to adopt procedures that will assist in identifying the source and nature of any new source of discharges to the works and any significant change in such flow and to safeguard against excessive loading of the collection and treatment system and to report same to the director. Nothing in this paragraph shall be construed as superseding the powers of any district or municipality under existing law to enact and enforce sewer ordinances and to issue permits for sewer connections consistent with the provisions of this chapter and any regulations issued hereunder.

(10) The director may propose and determine to modify, suspend, or revoke any outstanding permit, in whole or in part, for cause, including, but not limited to, violation of any permit term, obtaining a permit by misrepresentation or failure to disclose fully all relevant facts or any change in or discovery of conditions that calls for reduction or discontinuance of the authorized discharge. The director may also modify a permit at the request of the permittee upon a showing, satisfactory to the director, that the requested modification is appropriate in view of circumstances for which the permittee is not at fault.

Added by St.1966, c. 685, § 1; amended by St.1970, c. 704, § 3; St.1973, c. 546, § 9.

§ 44. Discharges without or in violation of permit; other violations; orders

(1) Whenever it appears to the director that there are discharges of pollutants without a required permit, or that such discharges are in violation of a permit issued under this chapter, or in contravention of any regulation, standard or plan adopted by the division, the director may order the discharger to apply forthwith for a permit, or for a new permit, or to take other appropriate action under rules and regulations adopted by the director subject to the provisions of chapter thirty A, and to cease and desist from making or allowing further discharges beyond a specified date until compliance with the order is fully achieved. Issuance of an order under this paragraph shall not be deemed an election to forego any action for criminal or civil penalties under section forty-two.

(2) In the event that any condition of a permit for discharges issued under paragraph (9) of section forty-three to publicly owned treatment works is violated, the director may order the violator to

prohibit all additional connections to such works from any source not already so connected, until the violation ceases and corrective action specified in the order has been taken. No permits for such connections may be issued while the order remains in effect.

(3) If the director finds, on the basis of information available to him, that an industrial user of publicly owned treatment works is not complying with a system of user charges to which he is subject under the conditions of his permit or under commonwealth or federal law, the director may order him to comply forthwith.

Added by St.1966, c. 685, § 1. Amended by St.1970, c. 704, § 4; St.1973, c. 546, § 10; St.1974, c. 26.

§ 45. Proposals to suspend or revoke permit; cease and desist orders; right to and request for hearing

Any proposal to suspend or revoke a permit, in whole or in part, under paragraph (10) of section forty-three, including any proposed reduction in an authorized discharge, and any cease and desist order under paragraph (1) of section forty-four, shall inform the person to whom it is issued of his right to request, within thirty days, a hearing under the provisions of chapter thirty A. If he fails to make such a request, he shall be deemed to have consented to the order. If a timely request is submitted, the director shall within a reasonable time hold a hearing under the provisions of chapter thirty A.

Added by St.1966, c. 685, § 1. Amended by St.1970, c. 704, § 4; St.1973, c. 546, § 11.

§ 46. Injunctive relief; findings of director; powers and duties of attorney general; jurisdiction

The attorney general may, upon request of the director, bring action for injunctive relief against any person violating a provision of this chapter, or of any permit, order, regulation or determination issued thereunder, and the superior court in equity shall have jurisdiction to enjoin such violation and to grant such further relief as it may deem appropriate. Notwithstanding any other provision of this chapter, if the director finds that a discharge or combination of discharges presents an imminent and substantial threat to the health, welfare or livelihood of any persons, he shall request the attorney general to bring suit, and the attorney general may bring suit in the superior court to enjoin forthwith the discharges causing such a threat or to require the offending discharges to take such other action as may be necessary.

Added by St.1966, c. 685, § 1. Amended by St.1970, c. 704, § 4; St.1973, c. 546, § 12.

§ 46A. Judicial review; jurisdiction

Any person aggrieved by an order, permit, determination or other action of the director, other than an order consented to, may obtain judicial review by filing an application for review in the superior court within thirty days after receipt of notice of the final decision of the derector. The superior court shall have jurisdiction in equity to enforce any order, decision or determination of the director, and any provision of sections twenty-six to fifty-three, inclusive, or regulation issued thereunder.

Added by St.1973, c. 546, § 13.

§ 47. Repealed by St.1970, c. 704, § 5

§ 48. Annual estimates and reports

The director shall annually submit to the budget director the estimates required by sections three and four of chapter twenty-nine, and shall file an annual report as required by sections thirty-two and thirty-three of chapter thirty.

Added by St.1966, c. 685, § 1.

§ 49. Repealed by St.1970, c. 704, § 5

§ 50. Terminals; licenses; inspection; rules and regulations; fees; penalty

The division shall have the power to license all terminals in the commonwealth for the loading or discharge of petroleum products from vessels, and may issue reasonable rules and regulations in connection therewith for the purposes of protecting the public safety and for preventing the spilling of the liquids into the waters of the commonwealth.

The division shall inspect periodically hoses, gaskets, tanks, pipelines and other equipment to make certain that they are in good operating condition, and may order the renewal of any of such equipment found unfit for further use.

The division may require by rules and regulations that suitable equipment be readily available to remove from the waters of the commonwealth any petroleum or chemical liquids spilled or discharged therein.

The division may require the payment of reasonable fees, designed to cover the costs incurred by the above inspections and its other duties.

Whoever operates such a terminal without a license from the division shall be punished by a fine of one hundred dollars per day during such period of unauthorized operation.

Added by St.1968, c. 648, § 3.

§ 50A. Oil terminals, pollution prevention, penalty

Notwithstanding the provisions of section fifty, every owner or operator of an oil terminal or wharf shall employ a trained crew and have a boom, on terminal property or readily available under a plan with other persons complying with the law or rules and regulations of the division and of a design approved by the division, which is capable of encircling any ship or vessel depositing oil into tanks or other receptacles at such terminal or wharf, and which is designed to prevent seepage, overflow or excess oil from polluting or contaminating any lake, river, harbor, tidal water or flats. If the director finds that because of the negligence of such owner, operator or one of his agents or servants repeated seepage, overflow or excess oil has contaminated any lake, river, harbor, tidal water or flats, he shall require every such owner or operator to encircle every ship or vessel depositing oil at his wharf or terminal with such a boom. The authority granted to the director under the preceding sentence shall not be construed to diminish his powers to regulate and control oil spillage, including his power to require the use of booms, granted by section fifty. The owner or operator of any such wharf or terminal shall remove any oil held within such boom prior to a ship or vessel leaving the same. Whoever violates the provisions of this section shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, and each day such violation continues shall constitute a separate offense, punishable by a like fine. A license issued under section fifty to operate a terminal may be revoked for violation of any of the provisions of this section.

Added by St.1969, c. 823. Amended by St.1973, c. 437.

§ 50B. Vessels discharging or receiving bulk petroleum products; bond

Any vessel, whether or not self-propelled, in or entering upon the waters of the commonwealth for the purpose of discharging or receiving a cargo of any bulk petroleum product in the commonwealth shall post a bond with the division of at least twenty-five thousand dollars payable to the commonwealth. Said bond shall be in a form approved by the division and may be obtained individually or jointly by the vessel, its owner or agent, its charterer, or by the owner or operator of the terminal at which the vessel discharges or receives said petroleum products. If the division determines that oil, as defined in clause (10) of section twenty-seven, has been discharged into the waters of the commonwealth from said vessel, the bond shall be forfeited to the extent of the costs incurred by the division in containing and removing said oil, to the extent of damage caused to the natural and recreational resources of the commonwealth, and to the extent of any otherwise uncollectable fines levied against the operators of said vessel for violation of any laws relating to water pollution abatement. The remedies provided in this section shall be in addition to all other remedies available. No bond shall be released without certification by the division that the vessel has not been a source of oil pollution. Other evidence of financial responsibility which is satisfactory to the division may be accepted by the division in lieu of bonding. Any vessel in the waters of the commonwealth for the purpose of discharging, or which receives, cargo of bulk petroleum products in the commonwealth without being bonded as provided in this section, or without having submitted other evidence of financial responsibility acceptable to the division, and the owner, agent and charterer of said vessel, and the operator of any terminal which receives or discharges such cargo from or to a vessel not so bonded, shall be punished by a fine of not more than five thousand dollars.

The superior court in equity shall have jurisdiction to enforce the provisions of this section.

Added by St.1970, c. 827, § 2.

§ 51. Coordination with federal government and local authorities; agreements

The division shall represent the commonwealth in its relations with the federal government and with cities, towns and authorities in all matters relating to oil pollution in the waters of the commonwealth or off-shore waters. It may enter into agreements with said agencies to coordinate supervisory activities and, subject to appropriation, to share reasonable costs.

It may contract with public or private individuals, concerns or agencies for such protective and clean-up services as it may require.

Added by St.1968, c. 648, § 3.

§ 52. Repealed by St.1979, c. 704, § 1

§ 52A. Waste oil retention facilities; installation and maintenance

Every automobile service station, marina serving powered watercraft and retail outlet selling automobile lubricating oil shall, no later than June thirtieth, nineteen hundred and seventy-four, install on the premises and maintain waste oil retention facilities, properly sheltered and protected to prevent spillage, seepage or discharge of the waste oil into storm or sanitary sewers or into the waters of the commonwealth. Every such station, marina and other such outlet shall be required to accept at no additional charge, waste oil in quantities not exceeding two gallons per day from any individual with sales receipts or other proof of purchase from such outlet. Every such station, marina and other such outlet shall periodically remove or have removed the accumulated waste oil so as not to violate any water pollution control or other statute or regulation.

Added by St.1973, c. 1162.

§ 53. Short title; investigation and prosecution of violations

Sections twenty-six to fifty-three, inclusive, shall be known and referred to as the Massachusetts Clean Waters Act and the officers of the division of law enforcement shall, upon request of the water resources commission or the division of water pollution control, investigate and prosecute violations of law, orders or rules and regulations relating to said act.

Added by St.1968, c. 648, § 3. Amended by St.1974, c. 182.

DIVISION OF MINERAL RESOURCES

§ 54. Director; definition; personnel; licenses; leases; charges and fees; rules and regulations; hearings and notice; exemptions

The division of mineral resources shall be within the department of environmental quality engineering in this section and in section fifty-five called the department and shall be under the administrative supervision of a director who shall administer the laws, rules and regulations relating to the mineral resources of the commonwealth. The term "mineral resources", as used in this section and in sections fifty-two and fifty-three, shall mean oil, gas, fossil fuels, sulphur, metals, ores, minerals, rock, soil, sand and gravel, or in coastal waters, as defined in section one of chapter one hundred and thirty, or lands thereunder. Said director may appoint such employees, experts and consultants as he deems necessary to carry out his duties. He shall, with the approval of the department, (*a*) license orderly exploration for mineral resources; (*b*) lease exclusive rights for extraction of such mineral resources as have been discovered; (*c*) establish charges and fees for such licenses and leases which will permit a fair profit for the licensee and lessee; and (*d*) adopt, after a public hearing, such rules and regulations relating to such exploration and extraction of mineral resources, and the transportation thereof in or over the coastal waters of the commonwealth, as will insure the proper utilization of such resources consistent with the harvesting and propagation of other valuable natural resources and the general safety, welfare and convenience of the commonwealth. No license to explore in the coastal waters shall be issued, no lease for extraction of mineral resources shall be granted, no charge or fee for such license or lease shall be established, no rule or regulation relating to such exploration or extraction shall be adopted, amended or rescinded unless and until said director shall first, and in each instance, hold a public hearing, notice of which, including a statement of intent, shall be sent, at least thirty days prior to said public hearing, to each city and town bordering on the coastal waters of the commonwealth. Such rules and regulations may provide for reasonable exemptions from the requirements of section fifty-three relative to leases for the extraction of mineral resources.

Sub-surface exploration for the purposes of design of, and the removal of material necessary for, beach replenishment, navigational improvement projects and piers, and bridges, culverts and other similar structures, approved by the department of public works and the department shall be exempt from the provisions of this section. Explorations for or extraction of minerals necessary for other public purposes may be exempted by the director from the provisions of this section requiring payment of a fee and posting of an indemnity and performance bond.

No lease shall be issued for the extraction of any mineral resource until such time as the department has obtained reliable information as to the quantities, quality and location of the resource available within the commonwealth, and as to the extent of and risk of harm to marine and other natural resources, which information shall be made public prior to the public hearing on any lease for the extraction of said resource.

The licensee or lessee shall not carry out any authorized operation in such a manner as to interfere unreasonably with navigation or fishing, or with the conservation of natural resources.

The licensee or lessee shall permit any official of the commonwealth thereunto authorized by the director to observe operations from time to time, and shall make available to said official any and all records in regard to depths being dredged or drilled, quantities being removed and type of materials found during extraction operations.

The licensee or lessee shall at all times keep the commonwealth effectually indemnified against all actions, proceedings, costs, charges, claims and demands whatsoever which may be made or brought against the commonwealth or its agents by any third party in relation to or in connection with this license or lease or any matter or thing done or purported to be done in pursuance thereof by posting a bond satisfactory to the director.

No licensee or lessee shall proceed to remove any minerals from the seabed and subsoil of the commonwealth until a bond has been posted with the department guaranteeing faithful performance of the contract with the commonwealth, faithful observance of any applicable rules, regulations and statutes, and timely payment as provided in said contract for any materials removed.

The director shall reserve the right to revoke or suspend, with the approval of the department, any license or lease issued hereunder, thereby terminating all rights granted thereunder, upon any breach or non-observance by the licensee of any of the terms and conditions of the license or lease, or upon any attempt to assign the rights of the licensee to any third party, for any reason, or any evidence of insolvency or other inability to perform the contract.

Added by St.1968, c. 736, § 2. Amended by St.1971, c. 567; St.1975, c. 706, §§ 72, 73.

§ 55. Cooperation with other governmental units; agreements; federal and private grants

Said director with the approval of the department shall cooperate with all departments, boards, officials and institutions of the commonwealth and its political subdivisions that may in any way be concerned with matters under its supervision; cooperate and consult with adjoining states and with the United States, or any agency thereof; enter into agreements relative to the federal administration and enforcement of off-shore exploration and extraction beyond the marine jurisdiction of the commonwealth; and may apply for, receive and expend such federal grants or reimbursements or private grants as may be available therefor in carrying out the duties of the division.

Added by St.1968, c. 736, § 2. Amended by St.1975, c. 706, § 74.

§ 56. License and lease requirements; violations; penalties; enforcement

No person shall explore by seismic, electronic or any other method for mineral resources on or in said coastal waters or lands thereunder without a license from said director. No person shall, except for purposes of exploration permitted under a license, extract mineral resources from said coastal waters or lands thereunder without a lease issued by said director. Any person violating any provision of this section shall be punished by a fine of not more than ten thousand dollars and, in addition thereto, any equipment, vehicles, boats and appurtenances used in said violation shall be liable to seizure and forfeiture. Any person violating any rule or regulation of the director shall be punished by a fine of not more than one thousand dollars, and his license or lease, if any, shall be subject to revocation or suspension. Violations committed within the coastal waters may be prosecuted in any district which has venue over coastal waters. The division of law enforcement shall enforce the laws, rules and regulations relating to mineral resources.

Added by St.1968, c. 736, § 2.

HAZARDOUS WASTE DISPOSAL BOARD

§§ 57, 58. Repealed by St.1979, c. 704, § 1

CHAPTER 21A

EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

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§ 1. Creation; secretary; acting secretary; undersecretary

There shall be an executive office of environmental affairs, hereinafter called the office, which shall be under the supervision of a secretary of environmental affairs, hereinafter called the secretary. Said secretary shall be appointed by the governor and shall be a person of skill and experience in the field of environmental affairs. Said secretary shall serve at the pleasure of the governor, shall receive such salary as may be determined by law, and shall devote full time to the duties of his office.

In the case of a vacancy in the office of secretary, or in the case of disability, as determined by the governor, or in his absence, the governor may designate an acting secretary to serve as secretary until the vacancy is filled or the absence, or disability, as determined by the governor, ceases. The acting secretary shall have all the powers and duties of the secretary and shall have similar qualifications as the secretary.

The secretary shall, with the approval of the governor, appoint and may remove, an undersecretary of the executive office, hereinafter called the undersecretary. Said undersecretary shall be a person of skill and experience in the fields of administration and environmental affairs, and shall perform such duties as may be assigned by the secretary. The position of undersecretary shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty. Said undersecretary shall receive such salary as may be determined by law and shall devote full time during business hours to the duties of his office.

Added by St.1974, c. 806, § 1.

§ 2. Duties and functions; inter-agency information, services and plans; filing applications

The office and its appropriate departments and divisions shall carry out the state environmental policy and in so doing they shall:

(1) develop policies, plans, and programs for carrying out their assigned duties;

(2) provide for the management of air, water and land resources to assure the protection and balanced utilization of such resources within the commonwealth, realizing that providing safe water to drink and clean air to breath is a basic mandate;

(3) provide for the propagation, protection, control and management of fish, other aquatic life, wildlife, and endangered species and promote and further develop hunting, fishing, recreational and competitive marksmanship, and trapping opportunities in the commonwealth;

(4) aid in the promotion and development of the food and agricultural resources of the commonwealth to preserve agricultural lands, and insure an adequate supply of high quality farm products;

(5) provide for the regulation and management of marine and coastal fisheries and natural resources including those located in the territorial waters, the economic zone waters and the continental shelf, wetlands, estuaries, shorelines, and interior of the commonwealth;

(6) promote the perpetuation, extension, and proper management of the public and private forest lands of the commonwealth;

(7) develop statewide policies regarding the acquisition, protection, and use of areas of critical environmental concern to the commonwealth;

(8) develop and administer programs relating to recreation including the acquisition of land, development of facilities, and the provision of advisory services to municipalities and private organizations;

(9) promote the best usage of land, water, and air to optimize and preserve environmental quality by encouraging and providing for, in cooperation with other appropriate state agencies, planned industrial, commercial, recreational and community development;

(10) provide for the prevention and abatement of water, land, air, noise, and other pollution or environmental degradation;

(11) promote the preservation and enhancement of natural, scenic, historic, and aesthetic qualities in both urban and rural areas;

(12) provide for the control of insects, plant diseases, and pests, and regulate the use, and disposal of pesticides;

(13) develop programs relating to the reclamation or disposal of solid waste material and the operation of sewer and water systems;

(14) encourage the restoration and reclamation of degraded or despoiled areas, including harbors and inland and coastal waters;

(15) manage all lands and properties acquired by or assigned to them to preserve their natural beauty, wilderness, or open character or hydrological, geological, historical, scientific, wildlife management, recreational or other significance or value;

(16) assist other state and regional agencies in developing appropriate programs and policies relating to land use planning and regulation in the commonwealth;

(17) analyze and make recommendations, in cooperation with other state and regional agencies, concerning the development of energy policies and programs in the commonwealth;

(18) advise, assist, and cooperate with such other departments, agencies, authorities, officials, and institutions, including state institutions of higher learning, as may be concerned with or involved in matters under their control or supervision;

(19) encourage recycling, resource recovery and environmentally sound purchasing practices to conserve resources and reduce waste;

(20) monitor the environment to identify changes and to insure efficient and effective control practices;

(21) develop environmental data management capabilities to aid environmental planning and decision-making;

(22) encourage, support, and undertake research and development and maintain laboratory and other research facilities to produce information relating to the ecological system, pollution prevention and abatement, resource management, and other areas essential to implementing the environmental policies of the commonwealth;

(23) advise and assist local governments, private and public institutions, organizations and associations, businesses, industries, and

individuals by providing and acting as a clearinghouse for environmental information, data, and other materials;

(24) promote the development of sound environmental education programs;

(25) represent and act on behalf of the commonwealth in connection with federal grant programs;

(26) keep accounts, records, personal data, enter into contracts, adjust claims, accept gifts, grants, bequests and devises, and subject to appropriation acquire real or personal property by eminent domain or otherwise;

(27) advise and assist state agencies, cities, towns, and other units of local government in the preparation of grant or loan applications with respect to any environmental protection or enhancement programs;

(28) promulgate rules and regulations necessary to carry out their statutory responsibilities;

In order to assist the office in the discharge of its duties, the secretary may request from any agency or political subdivision of the commonwealth any information relevant to the discharge of such duties.

An information copy of each application submitted by any state agency, including all state institutions of higher learning or any political subdivision to any public or private agency for a grant or loan with respect to any environmental protection or enhancement program, including the acquisition of land and facilities for these purposes shall be filed with the office not later than the twentieth day after submission.

As the primary agency of the commonwealth for environmental planning, the office shall utilize the services and plans of regional planning agencies, conservation districts, conservation commissions and historical commissions in fulfilling its environmental planning responsibilities.

Added by St.1974, c. 806, § 1.

§ 3. Functions of secretary; report

The secretary shall conduct comprehensive planning with respect to the functions of the office and shall coordinate the activities and programs of the departments and divisions within the office. He shall continually review the operations of the office with a view toward improving administrative organization, procedures and practices, promoting economy and efficiency.

He shall prepare annually a report of the organization and activities of the office as individually reported by the various departments and divisions within the office, the assignment of functions to various administrative units, officers and employees, and of the established places at which, and the methods whereby, the public may receive information or may make requests, and such other matters as he deem appropriate.

The secretary shall annually evaluate the status of the natural resources of the commonwealth. This evaluation shall be submitted as a part of the report referred to in the preceding paragraph, and it shall be accompanied by recommendations for appropriate actions to be taken to protect the environmental quality of the commonwealth or to conserve and preserve the natural resources of the commonwealth.

In order to carry out the provisions of this chapter the secretary may, and is encouraged to, seek the laboratory, technical, education, and research skills and facilities of state institutions of higher learning.

Added by St.1974, c. 806, § 1.

§ 4. Powers and duties of secretary

In order to enable him to coordinate and improve the operations of all departments, divisions and other administrative units within the office, the secretary shall have the following powers and duties concerning any power or duty assigned to any such department, division or other administrative unit:

(1) the power and duty to resolve administrative and jurisdictional conflicts between any such agencies or officers;

(2) the power and duty to implement, upon request of any such agency or officer, programs jointly agreed to by the secretary and such agency or officer;

(3) the power and duty to coordinate and improve program activities involving two or more such agencies or officers;

Added by St.1974, c. 806, § 1.

§ 5. Program review boards; appointment; reports; expenses

The secretary shall have the power to appoint one or more program review boards consisting of individuals who have demonstrated interest and competence in matters relevant to the area under review so that each major program area within the office shall be reviewed by such a board not less than once every four years. The written reports of such reviews shall be submitted to the secretary and shall be available to the public upon request. The members of such boards shall receive no compensation but shall be reimbursed for expenses necessary to the performance of their duties.

Added by St.1974, c. 806, § 1.

§ 6. Experts and assistants; appointment; qualifications; classified employees; tenure

Subject to appropriation, the secretary, with the approval of the governor, may appoint such experts and other assistants as he shall deem necessary to perform the functions of his office, provided that the provisions of chapter thirty-one and section nine A of chapter thirty shall not apply to any person holding any such appointment. Every person so appointed to any position in his office shall have experience and skill in the field of such position. So far as practicable in the judgment of the secretary, appointments to such positions in his office shall be made by promoting employees of the commonwealth serving in positions which are classified under chapter thirty-one, and such appointments shall at all times reflect the professional needs of the department or division affected. If an employee serving in a position which is classified under chapter thirty-one or in which he has tenure by reason of section nine A of chapter thirty shall be appointed to a position within his office which is not subject to the provisions of chapter thirty-one, he shall upon termination of his service in such unclassified position be restored to the position which he held immediately prior to such appointment; provided, however, that his service in such unclassified position shall be determined by the civil service commission in accordance with the standards applied by said commission in administering chapter thirty-one. Such restoration shall be made without impairment of his civil service status or tenure under section nine A of chapter thirty and without loss of seniority, retirement, or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, each person so appointed from a position in the classified civil service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

Added by St.1974, c. 806, § 1.

§ 7. Departments; commissioners, appointment, removal, qualifications, functions, salary

There shall be within the office an office of the secretary, a department of environmental quality engineering, a department of environmental management, a department of food and agriculture, a department of fisheries, wildlife, and recreational vehicles, and a department of the metropolitan district commission. Each department shall be headed by a commissioner. Each commissioner shall be appointed and may be removed by the secretary, with the approval of the governor. Each commissioner shall be a person of skill and experience in the field of his appointment. The commissioner of each department shall appoint all necessary employees within his department, except as may be otherwise provided by law. The positions of commissioners shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty. Each commissioner shall perform such functions as may be assigned to him by the secretary and shall devote his full time during business hours to the duties of his position. In case of a vacancy or an emergency, the secretary may appoint a person as acting commissioner for a period not exceeding six months, of any of the above departments, provided, the appointee is a person of skill and experience in the field of his appointment. The commissioner of environmental quality engineering shall receive a salary of thirty thousand and seventy-one dollars; the commissioner of fisheries, wildlife and recreational vehicles shall receive a salary of twenty-eight thousand and twenty-one dollars; and, the other commissioners shall receive such salary as may be determined by law.

Added by St.1974, c. 806, § 1. Amended by St.1975, c. 706, § 75; St.1977, c. 872, §§ 84A to 84G.

§ 7A. Director of division of waterways; state geologist

The commissioner of environmental quality engineering may appoint and remove a director of the division of waterways and a professional geologist, who shall be the state geologist, and neither position shall be subject to chapter thirty-one or to section nine A of chapter thirty.

Added by St.1977, c. 969, § 1A.

§ 8. Organization of departments; bureaus, boards, commissions, divisions; directors, members, etc.; appointment; powers, duties and functions

The department of environmental quality engineering shall include the bureau of environmental sanitation and all the powers and duties assigned to said bureau which relate to environmental health, air pollution control, noise regulation, community sanitation, water supply and water quality, noisome trades and sanitary landfills, and including those set forth in sections two B, two C, five E, five F, five G, seventeen, twenty-three, twenty-four, thirty-one C, thirty-one D, one hundred and forty-two A to one hundred and forty-two E, inclusive, one hundred and forty-three, one hundred and forty-seven, one hundred and fifty A, one hundred and fifty-two, one hundred and fifty-nine, one hundred and sixty to one hundred and sixty-six, inclusive, and one hundred and seventy-five of chapter one hundred and eleven, the water resources commission, the division of water pollution control, the division of outdoor advertising, the outdoor advertising board, the division of mineral resources, the powers and duties of the department of natural resources contained in section forty of chapter one hundred and thirty-one, the pesticide board, and the division of waterways.

The department of environmental management shall include the bureau of solid waste disposal of the department of public works, the board of natural resources, and the department of natural resources except for its division of fisheries and game, its division of law enforcement, its division of conservation services, its division of marine fisheries, and its division of mineral resources.

The department of food and agriculture shall include the department of agriculture, including the board of agriculture, the division of milk control, the milk control commission, the milk regulations board, and the state reclamation board.

The department of fisheries, wildlife, and recreational vehicles shall include the division of fisheries and wildlife, the fisheries and wildlife board, the division of marine and recreational vehicles, marine and recreational vehicles advisory board, the public access board, the division of marine fisheries and the marine fisheries advisory commission. The transfer of the said divisions to the department of fisheries, wildlife, and recreational vehicles, shall not operate to limit or alter the functions of said divisions nor the provisions of chapters twenty-one and one hundred and thirty-one affecting said division.

There shall be within the department of fisheries, wildlife and recreational vehicles an advisory board of nine members consisting of three members of each of the following boards and commissions: the fisheries and wildlife board, the marine fisheries advisory commission, the marine and recreational vehicles advisory board. Each board or commission shall appoint from its own members by majority vote the persons on said board representative of such board or commission. The advisory board shall advise the commissioner on all matters relevant to the affairs of the department, shall meet at least quarterly and at the request of the commissioner. The members of the advisory board shall receive no compensation but shall be reimbursed by the department for expenses necessary to the performance of their duties.

The director of the division of marine and recreational vehicles shall be appointed and may be removed by the commissioner of the department of fisheries, wildlife and recreational vehicles with the approval of the marine and recreational vehicles advisory board. The director of the division of marine fisheries shall be appointed and may be removed by the commissioner of the department of fisheries, wildlife and recreational vehicles with the approval of the marine fisheries advisory commission.

The department of the metropolitan district commission shall include the metropolitan district commission.

The office of the secretary shall include the division of law enforcement and the division of conservation services, including the committee for conservation of soil, water and related resources.

Added by St.1974, c. 806, § 1. Amended by St.1975, c. 706, §§ 76, 77.

§ 9. Grants and gifts; expenditure; records

The office may accept any gifts or grants of money or property, whether real or personal, from any source, public or private, including, but not limited to, the United States or its agencies, in order to assist it in discharging its duties. Grants and gifts of money shall be expending according to the laws pertaining to the expenditure of funds, and records of these expenses shall be audited by the state auditor.

Added by St.1974, c. 806, § 1.

§ 10. Environmental fund; additional funds; receipts from license fees, etc.; investment; expenses of office

In addition to designated funds which support specific environmental activities, including the Inland Fisheries and Game Fund, Marine Fisheries Fund, Agricultural Purposes Fund, Mosquito and Greenhead Fly Control Fund, Public Access Fund, State Recreational Areas Fund, Marine and Recreational Vehicle Fund, Highway Fund, Harbors and Inland Waters Maintenance Fund, Federal Capital Improvement Fund, Solid Waste Disposal Fund, M.D.C. Sewerage District Fund, M.D.C. Water District Fund, and M.D.C. Parks District Fund, there shall be an Environmental Fund as hereinafter established.

Monies received by the commonwealth from license fees, permit fees, special taxes, fines and penalties, charges of other kinds, including those for services rendered, and reimbursements, including federal monies, as a result of any program or activity undertaken by the office not designated by law for the purposes of the other dedicated funds cited above or for other specific purposes shall be held for the use of the office by the state treasurer as custodian in a special fund to be known as the Environmental Fund. Said monies shall be invested, reinvested, and held in the name of the commonwealth and of such fund by the state treasurer. Said fund, subject to appropriation, shall be used to pay any of the necessary expenses of the office.

Added by St.1974, c. 806, § 1.

§ 11. Marine and recreational vehicles advisory board; members; appointment; term; chairman

There is hereby established within the department of fisheries, wildlife and recreational vehicles an advisory board to be designated as the marine and recreational vehicle advisory board. Said board shall consist of seven members to be appointed by the governor, one such member shall be representative of the boating public and hold a certificate relative to boat registration; one such member shall represent the commercial boating business, one such member shall represent the snowmobiling public and hold such a recreational vehicle registration, one such member shall represent the commercial snowmobile industry, one member shall represent the trail bike industry, and one member shall represent the trail associations. Each member shall serve for a term of three years. The chairman of said board shall be appointed annually by the governor.

Added by St.1974, c. 806, § 1.

§ 12. Rules and regulations; adoption; review

At least sixty days prior to the proposed promulgation by the secretary, the commissioner of the department of environmental quality engineering or the commissioner of food and agriculture of any rule or regulation which substantially affects the public health, the secretary shall submit such rule or regulation to the commissioner of the department of public health for review and comment. If said commissioner of environmental quality engineering or the department of public health determines that such proposed regulation would endanger the public health, he shall, within thirty days of his receipt of said proposed regulation, convey in writing to the secretary his reasons for such determination. If the secretary finds, after consultation with said commissioner of the department of public health, that such regulation would endanger the public health, such regulation shall not be promulgated. If, in accordance with the procedures set forth herein, said commissioner of the department of public health finds that such proposed regulation could reasonably result in the declaration of public health emergency pursuant to section two A of chapter seventeen, such regulation shall not be promulgated.

If the secretary, the commissioner of environmental quality engineering or the commissioner of food and agriculture finds that immediate adoption of such a regulation is necessary pursuant to the provisions of subsection three of section two of chapter thirty A, he may submit said regulation to the commissioner of public health upon its adoption. If said commissioner of the department of public health determines that such proposed regulation would endanger the public health he shall, within thirty days of his receipt of said regulation, convey in writing to the secretary his reasons for such determination. If the secretary finds, after consultation with said commissioner of the department of public health, that such regulation would endanger the public health, said regulation shall not remain in effect. If, in accordance with the procedures set forth herein, said commissioner of the department of public health finds that such regulation could reasonably result in the declaration of a public health emergency pursuant to section two A of chapter seventeen, said regulation shall not remain in effect.

The commissioner of public health may propose to the secretary, the commissioner of environmental quality engineering or the commissioner of food and agriculture amendments to the standards, rules and regulations of the department of environmental quality engineering or the department of food and agriculture or new standards, rules and regulations in areas over which said departments take cognizance when in his opinion such amendments or new regulations are necessary to protect the public health. If the commissioner of public health finds that the failure of the department of environmental quality engineering or the department of food and agriculture to promulgate said amendments or new regulations could reasonably result in the declaration of a public health emergency pursuant to section two A of chapter seventeen, the department of public health may promulgate said standards, rules and regulations, if the department of environmental quality engineering or food and agriculture fails to do so. Such standard rules and regulations shall have the same force and effect as if they were promulgated by the departments of environmental quality engineering or food and agriculture.

Added by St.1974, c. 806, § 1. Amended by St.1975, c. 706, § 78.

§ 13. State environmental code; adoption; preparation of sewage disposal systems; enforcement of code

The commissioner of the department of environmental quality engineering shall adopt, and from time to time amend, regulations to be known as the state environmental code, which may provide penalties for violations thereof not exceeding five hundred dollars for any one offense. Said code shall become effective and have the force of law as provided in section six of chapter thirty A. Said code shall deal with matters affecting the environment and the well being of the public of the commonwealth over which the department takes cognizance and responsibility including, but not limited to, standards for swimming pools, bathing beaches, family type camp grounds and the disposal of sewage. A duly registered sanitarian or a professional engineer registered in the commonwealth may prepare plans for subsurface systems for disposal of domestic sewage of not more than two thousand gallons per day. Any other plans for a sewage disposal system shall be prepared by a professional engineer registered in the commonwealth. Nothing contained in this code shall be in conflict with any general or special law. Notwithstanding the foregoing provisions, nothing in this section or in any rule or regulation shall prohibit the preparation of plans for the repair of subsurface systems for disposal of domestic sewage of not more than two thousand gallons per day by any agent of the owner thereof; provided, however, that such plans are reviewed and approved by the local health authority and by a licensed sanitarian.

Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced but, if any such local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator. The superior courts shall have jurisdiction to enforce the provisions of said code and any actions brought to enforce said provisions shall be advanced for speedy trial.

Added by St.1975, c. 706, § 79. Amended by St.1977, c. 374; St.1979, c. 294.

§ 14. Disposal of dredged materials; permits; rules and regulations

The department of environmental quality engineering is hereby authorized and directed to issue permits for the disposal of dredged materials within the marine boundaries of the commonwealth when it is determined that such disposal and such disposed material will not unreasonably degrade or endanger the marine environment or public health. Said permit shall include such terms and conditions as said department finds necessary to assure conformance with this section and any other general or special law within its jurisdiction. No person shall so dispose of dredged material except pursuant to and in accordance with the terms and conditions of such a permit. Any violation of any provision of this section or any rule or regulation promulgated pursuant thereto, shall be punishable by a fine of up to one thousand dollars per day each day that such violation continues.

Said department is further authorized and directed to promulgate rules and regulations for the transportation and disposal of such dredged material within the commonwealth so as to protect and enhance environmental quality, the public health, and natural resources.

Added by St.1977, c. 625, § 1.

CHAPTER 21C

MASSACHUSETTS HAZARDOUS WASTE MANAGEMENT ACT

Sec.
1. Short title.
2. Definitions.
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4. Division of hazardous waste; duties and responsibilities of department.
5. Collection, transportation, storage, etc., of hazardous waste; prohibited acts.
6. Collection, storage, etc., of hazardous waste at generation site; regulations.
7. Licenses for collection, transportation, treatment, etc., of hazardous waste; underground drinking water source.
8. Entry of premises; enforcement of law.
9. Violations; orders by department.

Sec.
10. Violations; presumption; penalties; injunction.
11. Adjudicatory hearings; judicial review.
12. Disclosure of information.

§ 1. Short title

This chapter shall be known and may be cited as the "Massachusetts Hazardous Waste Management Act".

Added by St.1979, c. 704 § 2.

§ 2. Definitions

Unless the context clearly indicates otherwise, when used in this chapter, the following words and phrases shall have the following meanings:

"Collect", to gather at a place or places away from the premises of a licensee.

"Commissioner", the commissioner of the department.

"Department", the department of environmental quality engineering.

"Disposal", the discharge, deposit, injection, dumping, spilling, leaking, incineration or placing of any hazardous waste into or on any land or water so that such hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Division", the division of hazardous waste within the department of environmental quality engineering.

"Facility", a site or works for the storage, treatment, dewatering, refining, incinerating, reclamation, stabilization, solidification, disposal or other processes where hazardous wastes can be stored, treated or disposed of; however, not including a municipal or industrial waste water treatment facility if permitted under section forty-three of chapter twenty-one.

"Generator", a person who produces hazardous waste.

"Hazardous waste", a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness or pose a substantial present or potential hazard to human health, safety or welfare or to the environment when improperly treated, stored, transported, used or disposed of, or otherwise managed, however not to include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act of 1967 as amended, or source, special nuclear, or byproduct material as defined by the Atomic Energy Acts of 1954.

"Hazardous waste advisory committee", the committee established by section three of this chapter.

"Hazardous waste licensee", a person licensed under this chapter to undertake the collection, transportation, storage, treatment, use or disposal of hazardous wastes.

"Hazardous waste management", the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

"Manifest", the department approved form used for identifying the quantity, composition, and the origin, routing and destination of hazardous waste from the point of generation to the point of disposal, treatment or storage.

"Person", any agency or political subdivision of the federal government or the commonwealth, any state, public or private corporation or authority, individual, trust, firm, joint stock company, partnership, association, or other entity, and any officer, employee or agent of said person, and any group of said persons.

"Storage", the actual or intended containment of hazardous waste on a temporary basis or for a period not exceeding nine months or another period set by regulation or the department, in a manner which does not constitute disposal.

"Transfer station", the intermediate point in the transport of hazardous wastes where such wastes are brought, stored and transferred to vehicles for movement to other intermediate points or to the point of ultimate storage, treatment or disposal.

"Transport", the movement of hazardous wastes from the point of generation to any intermediate points or to the point of ultimate storage, treatment, recovery or disposal.

"Treatment", any method, technique or process, including neutralization, incineration, stablization or solidification, designed to change the physical, chemical or biological character or composition of any hazard waste so as to neutralize such waste or so as to render such waste less hazardous, non-hazardous, safer to transport, amenable to storage, or reduced in volume, except such method or technique as may be included as an integral part of a manufacturing process at the point of generation

"Underground drinking water source", an aquifer supplying drinking water for human consumption, an aquifer in which groundwater contains less than ten thousand parts per liter total dissolved solids, or an aquifer designated as such by the department or the municipality.

"RCRA", the federal Resource Conservation and Recovery Act of 1976, Public Law 94–580.

Added by St.1979, c. 704 § 2.

§ 3. Hazardous waste advisory committee

There is hereby established within the department a hazardous waste advisory committee to provide consultation to the department concerning matters covered by this chapter. The committee shall review the development of standards, rules, and regulations for hazardous waste management, and shall supply recommendations concerning methods by which existing hazardous waste management practices and the laws regulating them may be supplemented and improved and their administration financed.

The committee shall consist of at least nine members appointed by the governor, one of whom shall be a representative of the Massachusetts Municipal Association, one of whom shall be a representative of the Massachusetts Health Officers Association, one of whom shall be a representative of the Massachusetts Public Health Association, one of whom shall be a representative of the Massachusetts Association of Conservation Commissions, one of whom shall be a representative of the Associated Industries of Massachusetts, one of whom shall be a representative of the Massachusetts Mayors Association, one of whom shall be a representative from a regional planning agency, one of whom shall be a representative of the City Solicitors and Town Counsel's Association, and at least one of whom shall be a representative of the public knowledgeable in environmental affairs and shall have no financial interest in any of the recommendations or studies of the committtee. Such financial interest shall include, but not be limited to, service as a consultant to any person specializing in waste disposal, or as an attorney of a party with a direct financial interest in hazardous waste disposal. Any member shall be eligible for reappointment. In making initial appointments to said committee, the governor shall appoint two members for terms of one year, three members for terms of two years, three members for terms of three years, and one member for a term of four years. Upon the expiration of the term of any such member, his successor shall be appointed for a term of four years. Persons appointed to fill vacancies shall serve for the unexpired term of said vacancy.

Added by St.1979, c. 704 § 2.

§ 4. Division of hazardous waste; duties and responsibilities of of department

The department shall establish a division of hazardous waste which shall be administered by a director appointed by the commissioner and who shall serve at the pleasure of the commissioner. The appointment of said director shall not be subject to the provisions of chapter thirty-one or section nine A of chapter thirty. The department shall adopt rules, regulations, procedures and standards as may be necessary for the implementation of this chapter. Such regulations, procedures and standards shall be developed by the department with input and review by interested and affected persons and agencies as determined by the department including, but not limited to, the hazardous waste advisory committee, the department of public health and representatives of local health officials, and shall, where practicable, be consistent with those promulgated under the RCRA.

The responsibilities of the department shall include the developing and establishing of: (*a*) a list of hazardous wastes; (*b*) criteria and standards for the identification of hazardous wastes; (*c*) provisions for waiver by the department for any waste which the department determines is insignificant as a potential hazard to public health, safety, welfare of the environment, or the handling, treating, storing, use, processing, or disposal of which is adequately regulated by another governmental agency, consistent with regulations promulgated under RCRA; (*d*) standards and requirements for the treating, storing, transporting, use and disposal of such hazardous waste; and (*e*) for the recovery of resources from such hazardous waste.

The department shall take all action necessary or appropriate to secure for the commonwealth the benefits of RCRA, cooperate and enter into agreements and contracts with federal agencies, other states, interstate agencies, other agencies of the commonwealth or its political subdivisions, or private or nonprofit organizations in matters related to this chapter and RCRA, and may receive from, and dispense to, such agencies such funds as may be available for such matters.

The department shall conduct programs of public participation to assure that, before undertaking actions of programmatic and policy level significance, interested and potentially affected members of the public are afforded an opportunity to be heard regarding such actions. There shall be no less than six public hearings throughout the state, before the initial adoption of such actions or the promulgation of regulations.

The department shall adopt standards and procedures and shall establish fees for a hazardous waste licensing program of not less than one nor more than five hundred dollars, integrate with other laws pertaining to air, land and water resources all the provisions of this chapter for the purposes of administration and enforcement, avoiding duplication or inconsistency to the maximum extent practicable. Such integration shall be effected only to the extent that it can be done in a manner consistent with the provisions of this chapter and other laws pertaining to air, land and water resources. Any disposal or facility permitted by a valid permit issued pursuant to section forty-three of chapter twenty-one shall not be subject to the provisions of this chapter.

The department shall conduct a survey and prepare and publish a list of sites in the commonwealth where hazardous waste has been deposited or abandoned.

The department shall establish a manifest system that conforms with the requirements of RCRA.

The department shall be responsible for the supervision of the maintenance and operation of all facilities in order to ensure the public health, safety, welfare and the environment and shall coordinate research and development regarding methods of hazardous waste handling, storage, use, processing, and disposal and shall conduct appropriate studies relating to hazardous wastes.

The department shall require that a licensee obtain and maintain in effect a contract of liability insurance, a surety bond or other evidence of financial responsibility in favor of the commonwealth sufficient to assure financial responsibilities in the event of damages resulting from accidents or negligence.

The department shall furnish a copy of each permit or license application for the collection, storage, treatment, or disposal of hazardous waste to the local board of health, which shall be responsible for notifying the local governing authorities of any municipality within whose territorial jurisdiction a hazardous waste facility or activity is or will be located.

The department shall furnish, on an annual basis, to the local board of health, which shall be responsible for notifying the local governing authority of the municipality, information identifying the types and quantities of hazardous waste generated, stored, treated or disposed within the municipality unless exempted by the commissioner under the provision of section twelve.

The department shall provide for appropriate surveillance of hazardous waste processing, use, handling, storage, and disposal practices in the state and shall determine existing and expected rates of production of hazardous waste.

The department may: maintain a technical reference center on hazardous waste disposal recycling practices, and related information for public and private use; render technical assistance to state and local agencies in the planning and operation of hazardous waste programs; coordinate research and study in technical and managerial aspects of management and use of hazardous wastes, and recycling and recovery of resources from hazardous wastes; investigate market potential and the feasibility of use of hazardous wastes and recovery of resources from hazardous wastes; promote recycling and recovery of resources from hazardous wastes; conduct studies for the purpose of improving departmental operations; encourage the reduction or exchange, or both, of hazardous waste; and establish and maintain an information clearinghouse, which shall consist of a record of wastes which may be recyclable, and require every generator of hazardous waste to supply the department with the information for the clearinghouse while assuring each generator that the information shall be made available in such a way that the trade secrets of the generator are protected.

Added by St.1979, c. 704 § 2.

§ 5. Collection, transportation, storage, etc., of hazardous waste; prohibited acts

No person shall collect, transport, store, dispose of, treat, use or transport hazardous waste in a manner which could endanger human health, safety or welfare, or the environment, or in a manner inconsistent with any provision of this chapter, or of any regulation standard, license or order issued pursuant to this chapter.

No person shall collect, transport, store, treat, use or dispose of hazardous waste unless that person is in possession of a valid license issued pursuant to this chapter and, when in possession of such waste shall have a valid manifest; provided, however, that the department, by regulation, may exempt from this prohibition the short term containment of hazardous waste on the premises of the person who generated said waste, for a period not exceeding nine months, or another period set by regulation of the department in a manner which does not constitute disposal.

No person who generates or who otherwise comes into possession of hazardous waste shall transfer custody or possession of such waste to any person who does not have a valid hazardous waste license, and such generator must prepare a manifest precisely descriptive of the waste.

No person shall violate, or allow or suffer any employee, agent or contractor to violate any provision of this chapter or any regulation, license, approval or order issued hereunder.

No person shall act in the capacity of, or advertise as, or assume to act as a hazardous waste licensee unless such person is in possession of a valid hazardous waste license issued under this chapter.

No person shall use a motor vehicle for the transportation of hazardous wastes on any way unless there has been issued for said vehicle a vehicle identification device, issued under the provisions of this chapter, and said device is attached to a cab card which is carried in the operators compartment of said vehicle where it is accessible to the operator of said vehicle.

Added by St.1979, c. 704 § 2.

§ 6. Collection, storage, etc., of hazardous waste at generation site; regulations

The department shall establish such regulations concerning the collection, storage, treatment, use or disposal of hazardous wastes at the site of generation as it deems necessary to protect public health, safety and welfare and the environment, and to implement the provisions of this chapter and RCRA.

Said regulations shall include requirements that generators maintain records and report to the division and to other agencies regarding the quantity and type of hazardous wastes which they have generated, stored, treated, disposed of or transferred to another person, and such other requirements as the division deems necessary.

Added by St.1979, c. 704 § 2.

§ 7. Licenses for collection, transportation, treatment, etc., of hazardous waste; underground drinking water source

The department may license persons to undertake the collection, transportation, treatment and disposal of hazardous waste. After a site has been assigned under the provisions of section one hundred and fifty A of chapter one hundred and eleven, a person shall apply to the department for a license to construct and operate a facility upon such site. The application shall contain such information as the department shall require, including, but not limited to, detailed engineering plans, specifications, operating and maintenance procedures, a description of the applicant's qualifications to manage and operate such a facility, a plan for the closure and post closure care of the facility and site, a financial statement, and a statement of the amounts and types of waste to be received at the facility.

The department shall require a hydrogeological study of the site area if, in the opinion of the department, a potential exists for groundwater contamination.

The department may issue a license subject to such terms, restrictions and requirements as it deems necessary to comply with this chapter, including a condition that the applicant shall remain responsible for the long term care of the site until the department certifies that any hazardous waste remaining on the site does not constitute a danger to public health, safety or welfare or a threat to the environment.

The department shall not issue a license to persons to undertake the transport of hazardous waste unless the applicant has furnished a certification issued by the department of public utilities that said applicant has conformed to all of the requirements of chapter one hundred and fifty-nine B.

The department shall issue vehicle identification devices to any person licensed under this section. Such vehicle identification devices may be issued for a period not to exceed one year, shall not be transferred to any vehicle other than the one for which it has been issued, and shall not be issued unless the applicant therefor has paid an annual fee of two hundred dollars for each vehicle.

The department shall consult with the department of public utilities with respect to the adoption, amendment, or repeal of such regulations relating to the transportation of hazardous waste.

The department may deny, suspend or revoke a license at any time, if it determines that any of the terms or conditions thereof have been violated, that the holder of or applicant for the license has violated any provision of this chapter, of the RCRA, or of any regulation, standard, order, license or approval issued thereunder, or that the holder of, or applicant for, the license is not competent with respect to the licensed activity. Any person whose license is suspended, revoked or denied hereunder shall also be subject to such other penalties, sanctions or liabilities as may be provided by law. The department may on its own initiative, or upon request by a board of health, or upon request by a licensee, or municipal authority, modify a license where necessitated by a proposed change in the scope or method of the licensee's operation or by a change in applicable federal or state law or regulations or where necessitated by the receipt of evidence that the terms and conditions of such license are not providing the necessary protection of human health and the environment.

The denial, suspension or revocation of a license for any class of hazardous waste or category of hazardous waste license may be grounds for the denial, suspension or revocation of a license to that licensee for all other hazardous waste classes and license categories. Any person whose license renewal is denied or whose license is revoked for cause shall be barred from applying for any class or category of license issued under this section for a period of not more than five years. The term during which reapplication is barred shall be established as part of the determination or decision of the department in the proceedings relative to the denial or revocation.

Each license issued pursuant to this section shall be valid only for the person to whom it is issued and may not be transferred. All licenses shall be for a period not to exceed five years, unless a shorter term be specified therein by the division, or unless sooner revoked or suspended by the division. Every facility shall be inspected at least once a year.

Before any license to dispose of hazardous wastes shall be granted, the applicant shall prepare a detailed set of maps of the disposal site and the surrounding area as determined by the department. The maps shall be drawn to a scale of one hundred feet to one inch and shall include but not be limited to the names and locations of all streams, creeks, above and below ground water systems, including all aquifers, and shall also include a detailed statement describing the quality and chemical analysis of the water in the area where the proposed site is to be located.

No person shall establish, construct, or operate a facility for the landfill disposal of hazardous waste in a location overlying an actual, planned, or potential underground drinking water source as described on the groundwater maps of pertinent United States Geological Studies and the Massachusetts water resources commission.

Added by St.1979, c. 704 § 2.

§ 8. Entry of premises; enforcement of law

Personnel or authorized agents of the department may at all reasonable times enter any premises, public or private, for the purpose of investigating, sampling or inspecting any records, condition, equipment, practice or property relating to activities subject to this chapter, and may at any time enter such premises for the purpose of protecting the public health or safety, or to prevent damage to the environment. For the purposes of such entries no warrant shall be required provided, however, that upon demand by the owner or person in control of such premises, a warrant authorizing such entry and inspection shall be sought after such demand. Any court, judge, or justice authorized to issue warrants in criminal cases may issue such warrants.

Personnel of the department of public utilities appointed under section twelve F of chapter twenty-five shall have the authority to enforce the criminal, civil and administrative sanction provisions of this chapter and the regulations adopted thereunder as they relate to the transportation of hazardous waste and shall have the powers granted to them under section fourteen of chapter one hundred and fifty-nine B.

Added by St.1979, c. 704 § 2.

§ 9. Violations; orders by department

Whenever it appears that there is a violation of any provision of this chapter or any license, order, approval or regulation issued or adopted thereunder, the department may issue to a person causing or contributing, or likely to cause or contribute, to such violation or potential violation an order requiring the production or analysis of samples and the production of records, or imposing such restraints on or requiring such action by said persons, as it deems necessary to abate or prevent such hazard or violation. The department also may issue such orders as it deems necessary to secure compliance with any license. Issuance of an order under this section shall not preclude, and shall not be deemed an election to forego, any action to recover damages, or, to seek civil penalties, criminal fines and penalties or injunctive relief.

Added by St.1979, c. 704 § 2.

§ 10. Violations; presumption; penalties; injunction

Any violation of this chapter, or of any regulation, order, license, or approval made thereunder shall be presumed to constitute irreparable harm to the public health, welfare, safety and to the environment. Such presumption may be rebutted by the introduction of competent evidence. Any person who violates any provision of this chapter, or any regulation, order license or approval issued or adopted thereunder: (*a*) shall be punished by a fine of not more than twenty-five thousand dollars, or by imprisonment for not more than five years, or both, for each such violation; or (*b*) shall be subject to a civil penalty not to exceed twenty-five thousand dollars for each such violation. Each day each such violation occurs or continues shall be a separate offense.

The superior court shall have jurisdiction to enjoin violations of, or grant such additional relief as it deems necessary or appropriate to secure compliance with, the provisions of this chapter, or any order, license, approval or regulation issued or adopted thereunder upon the petition of the attorney general, commissioner, or a city or town.

Added by St.1979, c. 704 § 2.

§ 11. Adjudicatory hearings; judicial review

Any person aggrieved by a determination by the department to issue, deny, modify, revoke or suspend any license or approval, or to issue an order, under the provisions of this chapter, may request an adjudicatory hearing before the department under the provisions of chapter thirty A. Any such determination shall contain a notice of this right to request a hearing and may specify a time limit, not to exceed twenty-one days, within which said person shall request said hearing. If no such request is timely made, the determination shall be deemed assented to. If a timely request is received, the department shall within a reasonable time act upon a request in accordance with the provisions of said chapter thirty A.

If, in making a determination which under the provisions of the preceding paragraph may be the subject of an adjudicatory hearing, the department finds that an imminent threat to the public health or safety, or to the environment could result pending the conclusion of the adjudicatory hearing requested thereon, the department may order that the determination become provisionally effective and enforceable immediately upon issuance, and shall remain so notwithstanding and until the conclusion of any adjudicatory hearing procedures.

A person aggrieved by a final decision in an adjudicatory hearing held under the provisions of this section may obtain judicial review thereof pursuant to the provisions of chapter thirty A.

Added by St.1979, c. 704 § 2.

§ 12. Disclosure of information

Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, obtained by the department pursuant to the provisions of this chapter, shall, upon request, be kept confidential and not considered to be public record when it is deemed by the commissioner that such information, record, or report relates to secret processes, methods of manufacture, or production or that such information, record, or report if made public would divulge a trade secret. This section shall not prevent disclosure of any information necessary for an enforcement action or to comply with RCRA.

Added by St.1979, c. 704 § 2.

CHAPTER 22

DEPARTMENT OF PUBLIC SAFETY

Sec.
13A. Architectural barriers board; establishment; members, etc.; rules and regulations as to buildings open to public; enforcement; violations; complaints; penalties; proceedings; definitions.

§ 13A. Architectural barriers board; establishment; members, etc.; rules and regulations as to buildings open to public; enforcement; violations; complaints; penalties; proceedings; definitions

There shall be in the department a board to be known as the architectural barriers board, which shall consist of the secretary of the executive office of public safety or his designee, the secretary of the executive office of elder affairs or his designee, and five members appointed by the secretary of the executive office of public safety, with the approval of the governor, three of whom shall be selected from a list of nominees submitted by advocacy groups in behalf of the physically handicapped. The members initially appointed by said secretary shall serve for one, two, three and four years, respectively, according to the terms of their respective appointments. Upon the expiration of the term of a member appointed by said secretary, his successor shall be appointed for a term of four years. Any vacancy in the office of a member appointed by the secretary of public safety shall be filled for the unexpired term. At all times, at least three members of the board shall be physically handicapped persons and the chairman of the board shall be elected annually by the members. Employees of the board shall not be subject to the provisions of chapter thirty-one.

Each board member appointed by said secretary shall be paid for each day while in the actual performance of official functions at such rate as shall be approved by the commissioner of administration and shall also receive from the commonwealth all expenses necessarily incurred in connection with such official functions. Any board member appointed by said secretary absent from three consecutive board meetings, which absence is not for reasons of health, may be removed from membership by said secretary upon request of a majority of the members of the board.

The board shall make and from time to time alter, amend, and repeal, in accordance with the provisions of chapter thirty A, rules and regulations designed to make public buildings accessible to, functional for, and safe for use by physically handicapped persons and shall cause the dissemination of said rules and regulations, any amendments or revisions thereof, and other information, to persons requesting such information, including but not limited to, design and building professionals, architects, engineers, contractors, each state and local building inspector and building commissioner, state and local public works officials, each chief executive of cities and towns, and handicapped persons. All public newspaper solicitations for bids on projects regulated by this section shall state the requirement of conformity to rules and regulations of the board. Said rules and regulations shall be deemed to be a specialized code as referred to in section nineteen of chapter twenty-three B, the violation of which shall be subject to the provisions of section seventeen of said chapter, and which shall constitute gross negligence for the purposes of clause (*d*) of section sixty G of chapter one hundred and twelve. In addition to the penalties provided for violations of the state building code, the board shall have the power of local and state inspectors in the enforcement of its rules and regulations, including but not limited to, the right to enter all public buildings as defined by this section, and the power to institute and prosecute proceedings in the superior court to compel such compliance. In any such proceedings, the board or any member thereof may appear *pro se* or be represented by the attorney general or by counsel employed or designated by it for such purpose. The board shall not be required to pay any entry fee in connection with the institution of any such proceedings.

There shall be no construction, reconstruction, alteration or remodeling of a public building except in conformity with said rules and regulations, nor shall the use of any building be changed to a use in which the building is open to and used by the public as defined in this section until such building so conforms, nor until a copy of the plans and specifications have been approved as provided in this section and in section three W of chapter one hundred and forty-three, showing compliance with said rules and regulations; provided, however, that if the said board determines that compliance with said rules and regulations is impracticable in the particular case, it may provide for modification of, or substitution for, such rule or regulation.

Five per cent of the units in lodging or residential facilities for hire, rent or lease, containing twenty or more units, shall be of accessible, functional and safe units for physically handicapped persons.

The board shall receive complaints of noncompliance with this section or any rule or regulation promulgated hereunder from any person. The board shall investigate each such complaint and take such action thereon as is consistent with this section. The board shall, within sixty days of receipt of any such complaint, give notice in writing to the complaining party of its actions or proposed actions.

The following words, as used in this section, shall have the following meanings:

"Alteration", external or internal rehabilitation or renovation for which a building permit is needed or for which the cost of such rehabilitation or renovation equals or exceeds five per cent of the full and fair cash value of the building or, any work determined to be alteration by a state or local building inspector.

"Board", the architectural barriers board established by this section.

"Construction", work for which a building permit is required, work determined to be construction by a state or local building inspector, or work for which a certificate of occupancy is necessary upon completion.

"Physically handicapped person", a person confined to a wheelchair; a person who, because of the use of braces or crutches or because of the loss of a foot or leg, or because of an arthritic, spastic, pulmonary or cardiac condition, walks with difficulty or insecurity; a person who, due to a brain, spinal or peripheral nerve injury, suffers from faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he is insecure or exposed to danger; a person whose hearing is so impaired that he is unable to hear warning signals; and a person whose mobility, flexibility, coordination, and perceptiveness are significantly reduced by aging.

"Public building", buildings constructed by the commonwealth or any political subdivision thereof with public funds and open to public use, including but not limited to those constructed by public housing authorities, the Massachusetts Port Authority, the Massachusetts Parking Authority, the Massachusetts Turnpike Authority, the Massachusetts Bay Transportation Authority, or building authorities of any public educational institution, or their successors; and privately financed buildings that are open to and used by the public.

Buildings that are open to and used by the public shall include but not be limited to the following buildings: transportation terminals, institutional buildings, commercial buildings exceeding two stories in height in which more than forty persons are employed, buildings having places of assembly of a capacity of more than one hundred and fifty persons; hotels, motels, dormitories, public parking garages or lots with a capacity of twenty-five or more automobiles, public sidewalks and ways, public areas of apartment buildings and condominiums containing twelve or more units and of funeral homes, and rest rooms and public areas of shopping centers and restaurants.

"Reconstruction", the tearing down, removal, demolition or replacement of a public building or part of a public building.

"Remodeling", modification beyond an interior decoration or involving any structural change, or the refurbishing, 'updating or redecorating of a public building for which the cost of such refurbishing, updating or redecorating equals or exceeds five per cent of the full and fair cash value of the building.

Added by St.1967, c. 724. Amended by St.1971, c. 584, § 1; St.1971, c. 827, § 1; St.1974, c. 528, § 1.

CHAPTER 23

DEPARTMENT OF LABOR AND INDUSTRIES

[DIVISION ON THE NECESSARIES OF LIFE]

Sec.
9H. Emergency commission.

HEALTH, WELFARE AND RETIREMENT
TRUST FUNDS BOARD

Sec.
10D. Creation; composition; election.

DIVISION OF OCCUPATIONAL HYGIENE
11A. Creation; powers and duties.

[DIVISION ON THE NECESSARIES OF LIFE]

§ 9H. Emergency commission

Whenever the governor shall determine that an emergency exists in respect to food or fuel, or any other common necessary of life, including the providing of shelter, or any two or more of such necessaries of life, he may, by a writing signed by him, designate the adjutant general, the director of civil defense, the commissioner of labor and industries and the commissioner of public safety to act as an emergency commission, and thereupon the commission shall have, with respect to the necessary or necessaries of life as to which the emergency exists, all the powers and authority granted by the Commonwealth Defense Act of nineteen hundred and seventeen, being chapter three hundred and forty-two of the General Acts of nineteen hundred and seventeen, to persons designated or appointed by the governor under section twelve of said chapter three hundred and forty-two; and the governor may revoke such written authority at any time. During such an emergency, the governor, with the approval of the council, may make and promulgate rules and regulations, effective forthwith, for the carrying out of the purposes of this section and for the performance by the commonwealth and the cities and towns thereof of any function affecting food or fuel or any other common necessary of life, including the providing of shelter, authorized under Article XLVII of the amendments to the constitution. Violation of any such rule or regulation shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or by both. The provisions of said chapter three hundred and forty-two are hereby made operative to such extent as the provisions of this section may from time to time require.

Amended by St.1933, c. 362; St.1939, c. 261, § 4; St.1971, c. 97.

HEALTH, WELFARE AND RETIREMENT TRUST FUNDS BOARD

§ 10D. Creation; compensation; election

There shall be a health, welfare and retirement trust funds board, hereafter in this section and in sections ten E and ten F called the board, consisting of the commissioner of banks, the commissioner of insurance and the commissioner of labor and industries. The members shall annually elect one of their number to serve as chairman of said board.

Added by St.1958, c. 655, § 3. Amended by St.1969, c. 704, § 26.

DIVISION OF OCCUPATIONAL HYGIENE

§ 11A. Creation; powers and duties

In addition to such staff and facilities as may be necessary in the efficient performance of its duties, there shall be employed in the division of occupational hygiene persons having special knowledge of the causes and prevention of occupational diseases. It shall be the duty of the division to investigate conditions of occupation with reference to hazards to health and to determine the degree of such hazards, to investigate and evaluate methods for the control of such hazards, to assist in the preparation of rules and regulations for the preventing of occupational accidents and diseases, and, in co-operation with the department of public health or otherwise, to promote occupational health and safety education.

Added by St.1934, c. 331, § 3.

CHAPTER 23B

DEPARTMENT OF COMMUNITY AFFAIRS

STATE BUILDING CODE COMMISSION

Sec.

16. Establishment; membership; term; removal and vacancy; quorum; compensation and expenses; personnel; adoption and promulgation of state building code by commission.
17. Powers and duties.
18. General objectives of powers and duties.
19. Incorporation of specialized codes, rules or regulations.
20. Amendments to state building code; procedure.
21. Restriction standards; recommendations by cities or towns; adoption.
22. Inspectors; course of instruction; certificate as registered professional building code official; continuing educational program.
23. State building code appeals board; procedure; local boards of appeal.

STATE BUILDING CODE COMMISSION

§ 16. Establishment; membership; term; removal and vacancy; quorum; compensation and expenses; personnel; adoption and promulgation of state building code by commission

There shall be in the department a commission to be known as the state building code commission, in this section and in sections seventeen to twenty-three, inclusive, called the commission. The commission shall adopt and promulgate a state building code. The commission shall consist of eleven members, three of whom shall be the secretary or his designee, the state fire marshal or his designee and the chief of inspections of the department of public safety or his designee, all of whom shall be ex officio and voting members of the commission; and eight members to be appointed by the governor, one of whom shall be a registered architect, one of whom shall be a registered professional engineer who shall be a mechanical engineer, one of whom shall be a registered professional engineer who is a structural engineer, one of whom shall be a building owner, one of whom shall be a representative of the building trades, one of whom shall be a building contractor, and one of whom shall be an inspector of buildings in a town or a person in a town having similar duties, and one of whom shall be an inspector of buildings in a city or a person in a city having similar duties.

Upon the expiration of the term of an appointed member, his successor shall be appointed by the governor for a term of six years.

Any member of the commission may be removed by the governor for cause, after being given a written statement of the charges and an opportunity to be heard thereon. Vacancies shall be filled for an unexpired term in the same manner as original appointments.

No member shall act as a member of the commission or vote as such in connection with any matter as to which his private right, distinct from the public interest, is concerned.

A majority of the members of the commission shall constitute a quorum for the purpose of conducting business, but a lesser number may adjourn from time to time.

A chairman and a vice chairman shall be chosen by the members of the commission to serve in said capacities for not more than two consecutive years.

Each member of the commission who is not otherwise an employee of the commonwealth or a city or town shall receive from the commonwealth fifty dollars for each day or portion thereof spent in the performance of his official duties; provided that the total sum paid to any member in any fiscal year shall not exceed three thousand dollars. Each member shall be paid the necessary traveling and other expenses incurred by him in the performance of his duties.

Subject to the approval of the secretary, the commission shall employ an executive director who shall not be subject to the provisions of chapter thirty-one. The department may employ such other personnel to assist the executive director as it shall deem necessary.

Added by St.1972, c. 802, § 1. Amended by St.1974, c. 541, § 2; St.1975, c. 163, §§ 9, 10.

§ 17. Powers and duties

The commission shall have the following powers and duties:—

To formulate, propose, adopt and amend rules and regulations relating to (*i*) the construction, reconstruction, alteration, repair, demolition, removal, inspection, issuance and revocation of permits or licenses, installation of equipment, classification and definition of any building or structure and use or occupancy of all buildings and structures and parts thereof or classes of buildings and structures and parts thereof except bridges and appurtenant supporting structures which have been or are to be constructed by or are under the custody and control of the department of public works or the Massachusetts Turnpike Authority or for which said department or authority has maintenance responsibility; (*ii*) the rehabilitation and maintenance of existing buildings except bridges and appurtenant supporting structures which have been or are to be constructed by or are under the custody or control of the department of public works or the Massachusetts Turnpike Authority or for which said department or authority has maintenance responsibility; (*iii*) the standards or requirements for materials to be used in connection therewith, including but not limited to provisions for safety, ingress and egress, energy conservation, and sanitary conditions; (*iv*) the establishment of reasonable fees for the issuance of licenses and permits in connection therewith, which fees shall be collected and retained by the city or town issuing such permits or licenses. The commission shall examine the national model codes or any other codes used by cities or states for possible adoption of all or part of such codes as are most suited to the needs of the commonwealth.

Such rules and regulations, together with any penalties for the violation thereof as hereinafter provided, shall comprise and be collectively known as the state building code.

Whoever violates any provision of the state building code, except any specialized code, as described in section nineteen, which heretofore may have provided different penalties, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both, for each such violation. Each day during which any portion of a violation is permitted to exist shall constitute a separate offense.

(*b*) To subpoena witnesses, take testimony, compel production of books and records and to hold public hearings. The commission may designate one or more of its members to hold special public hearings and report on such hearings to the commission.

(*c*) To make a continuing study of the operation of the state building code, and other laws relating to the construction of buildings to ascertain their effect upon the cost of building construction and the effectiveness of their provisions for health, safety, energy conservation and security.

(*d*) To recommend or require tests and approvals and specify criteria and conditions, of materials, devices, and methods of construction, either upon the initiative of the commission or at the request of any interested person including but not limited to a manufacturer, builder, architect, engineer, inspector of buildings or building commissioner or local or state inspector, in order to ascertain the acceptability of said materials, devices and methods under the requirements of the state building code. The commission shall issue certification of such acceptability, which certification shall be binding on all cities and towns.

(*e*) To review, on its own initiative or on the applications of any inspector of buildings or building commissioner or of any local or state inspector, any interpretation under the state building code; and to reverse, modify or annul, in whole or in part, such interpretations except with respect to the specialized codes as defined in section nineteen.

(*f*) To establish an advisory board to be known as the technical code council, to assist in and make recommendations relative to the formulation, promulgation and administration of the state building code. Said council shall be convened regularly by the executive director of the commission and shall establish its own rules for the conduct of its business. Said council shall include a representative from each state department, commission, agency, board, or division concerned with the state building code, including specialized codes referred to in section nineteen, and such other members as may be determined by the commission.

(*g*) To formulate the administrative procedures and promulgate rules and regulations necessary to administer and enforce the state building code.

(*h*) To revise and amend the state building code exclusive of the specialized codes referred to in section nineteen at least once every five years, and to send a copy of such revisions or amendments to each inspector of buildings or building commissioner and each local and state inspector and to the boards of selectmen of each town and to the mayors of each city.

Added by St.1972, c. 802, § 1. Amended by St.1973, c. 1233, §§ 1, 2; St. 1974, c. 541, § 3; St.1979, c. 617, § 1.

§ 18. General objectives of powers and duties

The powers and duties of the commission set forth in section seventeen shall be exercised to effect the following general objectives:

(*a*) Uniform standards and requirements for construction and construction materials, compatible with accepted standards of engineering and fire prevention practices, energy conservation and public safety.

In the formulation of such standards and requirements, performance for the use intended shall be the test of acceptability, in accordance with accredited testing standards.

(*b*) Adoption of modern technical methods, devices and improvements which may reduce the cost of construction and maintenance over the life of the building without affecting the health, safety and security of the occupants or users of buildings.

(*c*) Elimination of restrictive, obsolete, conflicting and unnecessary building regulations and requirements which may increase the cost of construction and maintenance over the life of the building or retard unnecessarily the use of new materials, or which may provide unwarranted preferential treatment of types of classes of materials, products or methods of construction without affecting the health, safety, and security of the occupants or users of buildings.

Added by St.1972, c. 802, § 1. Amended by St.1973, c. 1233, §§ 3 to 5.

§ 19. Incorporation of specialized codes, rules or regulations

The state building code shall incorporate any specialized construction codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair or demolition promulgated by and under the authority of the various boards which have been authorized from time to time by the general court. The specialized codes referred to in this section shall include, but not be limited to, the state plumbing code, electrical code, fire safety code and elevator code.

Added by St.1972, c. 802, § 1.

§ 20. Amendments to state building code; procedure

Except for the specialized codes, as defined by section nineteen, which codes shall be amended only by those respective boards, commissions, departments or agencies authorized to do so by law, the state building code may be amended at any time by an affirmative vote of the majority of all the members at a regular or special meeting of the commission. In addition, any person may propose amendments to the state building code. Public hearings shall be held in the city of Boston in May and October of each year, and at such other times and places as the commission may determine, in order to provide a regularly scheduled forum for any person to propose amendments to the state building code. The commission shall vote within ninety days of such public hearing on any amendment proposed to the commission at the May or October meetings.

The commission shall send a copy of any amendments to the state building code which are adopted to each inspector of buildings or building commissioner, as defined by section one of chapter one hundred and forty-three, and to the commissioner of public safety and to the secretary of communities and development as well as to the boards of selectmen in towns and to mayors in cities within a reasonable time after filing said amendments with the state secretary.

Added by St.1972, c. 802, § 1. Amended by St.1974, c. 541, § 4; St.1975, c. 163, § 11.

§ 21. Restrictive standards; recommendations by cities or towns; adoption

The board of selectmen in a town or the mayor in a city may recommend to the commission the adoption of rules and regulations imposing more restrictive standards than those established by the state building code for construction, alteration, repair, demolition, and removal in such a city or town.

If the commission finds that more restrictive standards are reasonably necessary because of special conditions prevailing within such city or town and that such standards conform with accepted national and local engineering and fire prevention practices, with public safety and with the general purposes of a statewide building code, the commission may, after notice to said board of selectmen or mayor, and after a public hearing, adopt rules and regulations, impose conditions in connection with the adoption thereof and terminate such rules and regulations at such time and in such manner as the commission may deem necessary, desirable or proper.

Added by St.1972, c. 802, § 1. Amended by St.1974, c. 541, § 5.

§ 22. Inspectors; course of instruction; certificate as registered professional building code official; continuing educational program

The department shall prepare a course of instruction or shall approve a course of instruction offered by others for training persons intending to qualify or be certified as local inspectors to be given at such times and places as will insure its availability to such interested citizens of the commonwealth.

The department is authorized to issue a certificate classifying any person that satisfactorily completes such course of instruction as a registered professional building code official.

The department shall also prepare and administer a continuing educational program of instruction designed to assist all local and state inspectors of buildings in executing their responsibilities under this act. Regular attendance at these meetings shall be required of all state and local inspectors and such instruction shall be given at such times and places as will insure its availability to state and local inspectors. No state or local inspector who attends such course of instruction shall lose any rights relative to compensation or vacation time.

Added by St.1972, c. 802, § 1.

§ 23. State building code appeals board; procedure; local boards of appeal

There shall be in the department a state building code appeals board, hereinafter called the board, composed of the state building code commission established by section sixteen.

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, excepting any specialized codes as described in section nineteen, which heretofore may have established separate appeals procedures, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the board.

Appeals hereunder shall be on forms provided by the board and shall be accompanied by such fee as may be established by it.

The state, city or town officer in charge of the record and all other papers and documents relative to an appeal shall forthwith upon receipt of request of the board transmit the papers and documents constituting such record to the board.

An appeal shall stay all proceedings in furtherance of the action or failure to act appealed from unless the state or local agency or any person charged with the administration or enforcement of the state building code or any of its rules and regulations presents evidence that a stay would involve imminent peril to life or property.

The chairman of the board may designate any three members of the board to hold any public hearing under this section, and to hear testimony and take evidence.

The board in hearings conducted under this section, shall not be bound by strict rules of evidence prevailing in courts of law or equity.

Decisions on appeal shall be made by the three members of the board conducting the public hearing. Every decision shall require the concurrence of at least two of the three members holding the public hearing and shall state in writing its findings of fact, its conclusions, reasons for its decision and indicate the vote of each member upon the decision.

The chairman shall fix a convenient time and place for a public hearing before said three members. Such hearing shall be held not later than thirty days after the entry of such appeal unless such time is extended by agreement with the appellant. The chairman shall give notice of the time and place of said hearing to all interested parties at least ten days prior thereto. Any such party may appear in person or by agent or attorney at such hearing. The board shall within thirty days after such hearing, unless such time is extended by like agreement, issue a decision or order reversing, affirming or modifying in whole or in part such interpretation, order or requirement, or postponing the application thereof.

The board of appeal may vary the application of any provision of this code to any particular case when in its opinion the enforcement thereof would do manifest injustice, provided that the decision of the board shall not conflict with the general objectives set forth in section eighteen.

In exercising its powers under this section the board may impose limitations both as to time and use, and a continuation of any use permitted may be conditioned upon compliance with regulations made and amended from time to time thereafter. A copy of such order or decision of the board shall be sent forthwith by certified mail to all interested parties.

A record of all decisions on appeals of the board and of votes thereunder, properly indexed, shall be maintained in the office of the board and shall be open to public inspection at all times during business hours.

The board may establish a local board of appeal in any city or town or a regional board of appeal for more than two or more cities or towns consisting of not less than three members nor more than five members. The board may require as a condition precedent to appeal to the board that said appeal be first heard by such local or regional board of appeals. Such local or regional board of appeals may establish rules for its own procedure and shall have the same powers and duties relative to appeals as the state building code appeals board. A copy of any decision by a local board of appeal shall be transmitted to the commission within ten days after the rendering of such decision.

Added by St.1972, c. 802, § 1.

CHAPTER 28A

OFFICE FOR CHILDREN

Sec.
1. Policy and purposes.
2. Definitions applicable to sections 1 to 8.
5. Day care services; promotion.

Sec.
9. Definitions applicable to this section and sections 10 to 16.
10. Licensure or approval of day care centers, family day care homes or systems, family foster care, placement agencies, and group care and temporary shelter facilities; standards and requirements; rules and regulations for sections 9 to 16; inspection; consultation.
11. Operation of facilities or agencies without licensure or approval prohibited; restrictions on child placement.
11A. Adoptive family; background information furnished to person whose consent is required.
12. Licensure of day care facilities by cities or towns; delegation of power authorized.
13. Suspension, revocation, etc. of license or approval; grounds; hearing; decision; judicial review.
14. Advertisements for placement or reception of children restricted.
15. Violations of sections 11 or 14; punishment.
16. Violations of section 11 or 14; enforcement; jurisdiction.

§ 1. Policy and purposes

It is hereby declared to be the policy of the commonwealth to assure every child a fair and full opportunity to reach his full potential by providing and encouraging services which strengthen family life and support families in their essential function of nurture for a child's physical, social, educational, moral, and spiritual development. Every child shall be entitled to the full protection of the commonwealth. In the absence or inability of parents to provide care and protection for their children, it shall be the responsibility of the commonwealth to assure substitute residential care and protection for every child. The purposes of this chapter are as follows:

(1) to assure the sound and coordinated development of all services to children;

(2) to assure parents a decisive role in the planning, operation, and evaluation of programs which aid families in the care of children;

(3) to respect and draw upon family values and cultural heritage;

(4) to establish the administrative framework for, and promote the development of day care services in order to provide that such services shall be available in every community for all families which express a need for them;

(5) to assure that family foster care or other residential care is provided only when the family itself of the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound development; and

(6) to assure that every child shall in all circumstances be protected against all forms of neglect, cruelty, abuse, and exploitation.

Added by St.1972, c. 785, § 1.

§ 2. Definitions applicable to sections 1 to 8

The following words as used in sections one to eight, inclusive, shall, unless the context otherwise requires, have the following meanings:—

"Child", any person under the age of sixteen or under the age of eighteen if such child is a child with special needs.

"Child with special needs", any child, who because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, or environmental factors, or other specific learning disabilities, is inhibited from achieving his full potential.

"Day care services", any public or privately sponsored non-residential programs, which provide for the care of school-age children when not attending school or pre-school children by someone other than members of the child's own family, and which involve and support the child's parents or guardians and are appropriate to the development of the child, including in-home care; homemaker services; family day care homes; group day care homes; day care centers for the full day; part-day preschool programs and nursery schools; private kindergartens; before and after school programs; temporary shelter care programs and programs which offer night care.

"Director", director of the office for children.

"Office", the office for children.

"Services to children", public or privately funded programs which provide developmental, preventive, protective, recreational or rehabilitative services for children including services for children with special needs; day care services; foster care services; residential group homes; services to assist parents in child nurture and family living; summer camps; playground programs; services to children who are found to be subject to neglect, abuse or exploitation; diagnostic, preventive and remedial medical services to children; information and referral services; and legal services to assure the rights of children.

Added by St.1972, c. 785, § 1.

§ 5. Day care services; promotion

The office shall promote the development of day care services for children in the following manner:

1. The office shall seek, accept and distribute or expend all federal funds available to the office for day care and related services and shall assist other agencies of the commonwealth and local agencies to take full advantage of all federal funds available for such services.

2. The office shall provide general information and technical assistance to groups of parents and other providers and potential providers of day care services, including information regarding sources of available funds.

3. The office may provide day care services to children by contracting for such services, or, in the case of demonstration programs, by operating such services or contracting for such services.

4. The office shall be responsible for the prior approval of the distribution or expenditure of funds for day care services by departments or agencies within the executive office of human services, which approval shall be required.

5. The office shall be resonsible for approval of budget requests for day care services from departments or agencies within an executive office by agreement with the secretary of any executive office, and such approval, by agreement, may be required.

Added by St.1972, c. 785, § 1.

§ 9. Definitions applicable to this section and sections 10 to 16

The following words as used in this section and sections ten to sixteen, inclusive, shall, unless the context otherwise requires, have the following meanings:—

"Adoption", the establishment of the legal relationship of parent and child in accordance with the provisions of chapter two hundred ten.

"Children with special needs", children who, because of temporary or permanent disabilities arising from intellectual, sensory, emotional, physical, or environmental factors, or other specific learning disabilities are or would be unable to progress effectively in a regular school program.

"Day care center", any facility operated on a regular basis whether known as a day nursery, nursery school, kindergarten, child play school, progressive school, child development center, or preschool, or known under any other name, which receives children not of common parentage under seven years of age, or under sixteen years of age if such children have special needs, for nonresidential custody and care during part or all of the day separate from their parents. Day care center shall not include: any part of a public school system; any part of a private, organized educational system, unless the services of such system are primarily limited to kindergarten, nursery or related preschool services; a Sunday school conducted by a religious institution; a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services; a family day care home; an informal cooperative arrangement among neighbors or relatives; or the occasional care of children with or without compensation therefor.

"Family day care home", any private residence which on a regular basis, receives for temporary custody and care during part or all of the day, children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a family day care home shall not exceed six, including participating children living in the residence. Family day care home shall not mean a private residence used for an informal cooperative arangement among neighbors or relatives, or the occasional care of children with or without compensation therefor.

"Family day care system", any person who, through contractual arrangement, provides to family day care homes which it has approved as members of said system, central administrative functions including, but not limited to, training of operators of family day care homes; technical assistance and consultation to operators of family day care homes; inspection, supervision, monitoring, and evaluation of family day care homes; referral of children to available family day care homes; and referral of children to available health and social services; provided, however, that family day care system shall not mean a placement agency or a day care center.

"Family foster care", substitute parental care in a family given in a private residence for up to six children under sixteen years of age on a regular, twenty-four-hour-a-day, residential basis by anyone other than a relative by blood or marriage; provided, however, that such care may be provided for more than six children in order to place siblings in the same residence.

"Group care facility", any facility which provides care and custody for one or more children under sixteen years of age, on a regular, twenty-four-hour-a-day, residential basis by anyone other than a relative by blood or marriage, notwithstanding the fact that such care may include educational instruction; provided, private schools shall be considered group care facilities only if such schools provide special services to children with special needs. Group care facility shall not mean family foster care, a hospital, ward or comprehensive center licensed under the provisions of section twenty-nine of chapter nineteen, a hospital, ward or comprehensive center operated by the commonwealth or any subdivision thereof, a hospital, institution for unwed mothers, convalescent or nursing home, rest home, or infirmary licensed under the provisions of chapter one hundred eleven, or any facility licensed under the provisions of section forty-four of chapter one hundred twenty-three. Group care facility shall not be limited to a facility defined as a group residence in section one of chapter one hundred and forty-three.

"Office", the office for children.

"Person", any individual, partnership, corporation, association, organization or trust or any department, agency or institution of the federal government or of the commonwealth or any political subdivision thereof.

"Placement agency", a department, agency or institution of the Commonwealth, or any political subdivision thereof, or any organization incorporated under chapter one hundred and eighty, one of whose principal purposes is providing custodial care and social services to children, which receives by agreement with a parent or guardian, by contract with a state agency or as a result of referral by a court of competent jurisdiction, any child under sixteen years of age, for placement in family foster care or a group care facility, or for adoption.

"Temporary shelter facility", any facility which operates to receive children under eighteen years of age for temporary shelter during the day or night when such children request shelter therein, or when such children are placed there by a placement agency, a law enforcement agency, or a court with authority to make such placement. Temporary shelter facility shall not mean family foster care or a group care facility, a police station or a town lockup.

Added by St.1972, c. 785, § 1. Amended by St.1974, c. 682, § 1; St.1975, c. 125; St.1975, c. 858, § 1.

§ 10. Licensure or approval of day care centers, family day care homes or systems, family foster care, placement agencies, and group care and temporary shelter facilities; standards and requirements; rules and regulations for sections 9 to 16; inspection; consultation

(*a*) The office shall issue and may renew a license to any person other than a department, agency or institution of the commonwealth or any political subdivision thereof, who meets applicable standards and requirements to establish and maintain a day care center, family day care home which is not a part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, group care facility, or temporary shelter facility. The office shall issue and may renew a license to any organization incorporated under chapter one hundred and eighty which meets applicable standards and requirements to establish and maintain a placement agency. The office shall issue approval to a department, agency, or institution of the commonwealth or any political subdivision thereof which it deems meets such applicable standards and requirements to establish and maintain a day care center, family day care home which is not part of a family day care system, family day care system, placement agency, group care facility, or temporary shelter facility.

(*b*) The office may issue a provisional license for or may provisionally approve a day care center, family day care home which is not part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, placement agency, group care facility, or temporary shelter facility, any of which has not previously operated or is operating but is temporarily unable to meet applicable standards and requirements.

(*c*) The office shall, pursuant to the provisions of chapter thirty A, and after consultation with the executive offices of educational affairs, manpower affairs, public safety, communities and development, and the departments of youth services, mental health, public health and public welfare, promulgate rules and regulations to carry out the purposes and functions of sections nine to sixteen, inclusive. Such regulations, as they relate to standards and requirements for licensure and approval of day care centers, family day care homes which are not part of a family day care system, family day care system, family foster care which is not supervised and approved by a placement agency, placement agencies, group care facilities, and temporary shelter facilities, shall be appropriate for the protection of the health, well-being and development of children and shall include, but need not be limited to, provisions regarding (1) admission policies and procedures; (2) safe transport of children; (3) physical plant and equipment; (4) the number and qualifications of staff; (5) the nature of programs of care or treatment; (6) health care and nutrition; (7) rights and responsibilities of parents, children and staff; (8) record keeping and other procedures relevant to evaluation; and (9) organization, financing and administration. In formulating the regulations pertinent to family day care homes and family foster care, the office shall give special attention to fire and safety precautions. Such regulations may establish classifications for licensure or approval as are necessary to achieve the purposes of sections nine to sixteen, inclusive; provided, that the standards and requirements for approval of a day care center, family day care home which is not part of a family day care system, family day care system, placement agency, group care facility, or temporary shelter facility, operated by a department, agency or institution of the commonwealth or any political subdivision thereof shall be the same as or higher than those applicable to the licensure or comparable facilities or services. Such regulations shall establish reasonable license fees and appropriate terms for all licenses granted under the provisions of this section. No such license or approval shall be transferable. A provisional license or approval shall be issued for a period not to exceed six months and in no case shall a person operate under a provisional license, provisional approval, or renewal thereof for more than twelve consecutive months. Any rule or regulation involving medical treatment shall include appropriate exemptions for children whose parents object thereto on the ground that it conflicts with the tenets and practice of a recognized church or religious denomination of which the parent or child is an adherent or member. The office shall conduct a comprehensive review of rules and regulations established under this section at least once every five years.

(*d*) The office may, at any reasonable time, visit and inspect any facility operated by a person who is subject to licensure or approval under this section in order to determine whether such facility is being operated in compliance with law and with the rules and regulations established under paragraph (*c*) of this section.

(*e*) The office shall provide consultation to assist applicants in meeting its requirements for licensure or approval, and in meeting other applicable state and local requirements relative to fire, safety, and zoning codes.

Added by St.1972, c. 785, § 1. Amended by St.1974, c. 682, § 2; St.1975, c. 858, §§ 2, 3.

§ 11. Operation of facilities or agencies without licensure or approval prohibited; restrictions on child placement

(*a*) No person shall operate a day care center, family day care home, family day care system, group care facility, placement agency, or temporary shelter facility unless such person is licensed by the office; provided, however, that a person who operates a family day care home shall not be required to obtain a license if such person operates as part of a licensed family day care system; and provided further, that a department, agency or institution of the commonwealth or any political subdivision thereof shall obtain an approval rather than a license in order to operate a day care center, family day care home, family day care system, group care facility, placement agency, or temporary shelter facility.

(*b*) No person shall maintain a child in family foster care without placement, supervision and approval by a placement agency unless such person is licensed by the office.

(*c*) No person shall place or knowingly facilitate the placement of any child as defined in section two in the care or control of any other person not related to such child by blood or marriage, or in the care or control of any organization other than a licensed or approved placement agency, for purposes of adoption in the commonwealth. No person unrelated to such a child by blood or marriage, and no organization other than a licensed or approved placement agency, shall receive such a child for purposes of adoption, except from a licensed or approved placement agency. Nothing herein shall prevent the placement of a child who is not a citizen of the United States when a home study of the prospective parent or parents prior to the placement of the child is performed by a licensed placement agency. For the purpose of this section the spouse of the natural parent of such a child shall be deemed to be related by marriage to said child.

Added by St.1972, c. 785, § 1. Amended by St.1974, c. 682, § 3; St.1975, c. 858, § 4.

§ 11A. Adoptive family; background information furnished to person whose consent is required

A person whose consent is required by section two of chapter two hundred and ten may, prior to surrender, request from a placement agency background information pertaining to the prospective adoptive family in which the placement agency expects to place the child if surrendered. The nature of the background information shall be established in the rules and regulations promulgated by the office as authorized by section ten; provided, however, that no agency shall be required to reveal the identity or geographical location of the prospective adoptive family to such person. The placement agency shall provide the said background information in writing unless the person whose consent is required signs a written waiver of the request.

Added by St.1975, c. 858, § 5.

§ 12. Licensure of day care facilities by cities or towns; delegation of power authorized

The director, in accordance with guidelines established by the office, may delegate on an annual basis to any city or town the power to issue, suspend, revoke, make probationary or renew licenses, pursuant to the regulations promulgated by the office under section ten, to persons operating or seeking to operate day care centers, family day care homes which are not part of family day care systems, and family day care systems; provided, that any such city or town must demonstrate that the delegation will result in more effective exercise of such power; and provided, further, that persons subject to licensure by such city or town shall be governed by the same rules and regulations as persons subject to licensure by the office.

Added by St.1972, c. 785, § 1.

§ 13. Suspension, revocation, etc. of license or approval; grounds; hearing; decision; judicial review

Subject to the requirements of chapter thirty A the office may suspend, revoke, make probationary, refuse to issue or refuse to renew the license or approval of any person. Such action may be taken if such person: (1) fails to comply with applicable rules and regulations; (2) furnishes or makes any misleading or false statement or report required under such rules and regulations; (3) refuses to submit any reports or make available any records required by such rules and regulations; or (4) refuses to admit representatives of the office at any reasonable time for purposes of investigation or inspection. The office may temporarily suspend a license in an emergency situation without a prior hearing; provided, however, that upon request of an aggrieved party, a hearing shall be held as soon after the license is suspended as is reasonably possible. Any party aggrieved by a final decision of the office in any adjudicatory proceeding under this section may petition for judicial review in accordance with the provisions of section fourteen of chapter thirty A.

Added by St.1972, c. 785, § 1.

§ 14. Advertisements for placement or reception of children restricted

No person shall cause to be published in a newspaper distributed anywhere in the commonwealth or to be broadcast on a radio or television station in the commonwealth an advertisement or notice for the placement or reception of a child under sixteen years of age for family foster care, group residential care or for adoption unless such advertisement is placed by a licensed or approved placement agency, by a licensed group residence, or with the written approval of the office.

Added by St.1972, c. 785, § 1.

§ 15. Violations of sections 11 or 14; punishment

Any person who violates the provisions of section eleven or section fourteen of this chapter may be punished for each such violation by a fine of up to one thousand dollars or by imprisonment for not more than six months, or both.

Added by St.1972, c. 785, § 1.

§ 16. Violations of section 11 or 14; enforcement; jurisdiction

Upon petition of the office, the superior court shall have jurisdiction to enjoin any violation of the provisions of sections eleven or fourteen of this chapter or to take such other action as equity and justice may require.

Added by St.1972, c. 785, § 1.

TITLE III

LAWS RELATING TO STATE OFFICERS

CHAPTER 30

GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES

Sec.

1. "Departments" defined.
9B. Certain permanent public employees; arbitrary removal; protection.
9C. Mental or public health department employees; damages caused by patients; reimbursement.
9D. Teachers of certain state institutions; removal; lowering in rank.

ENVIRONMENTAL IMPACT OF PROJECTS, ETC., CONDUCTED BY AGENCIES

61. Determination of impact by agencies; damage to environment; prevention or minimizing; definition applicable to this section and section 62.
62. Definitions.
62A. Notice of intent to apply; forms; certification of need for environmental impact statement; application of section.
62B. Environmental impact reports; preparation and submission; funding.
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62E. Categories of projects and permits not requiring environmental impact reports; establishment.
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62G. Federal environmental impact statements in lieu of reports.
62H. Notice of intent to commence project without environmental impact report upon finding of report needed; allegation of improper determination; concealment of facts; rules and regulations.

CONVERSION OF HOSPITALS

64. Conversion of hospitals; approval of general court.

§ 1. "Departments" defined

The word "departments" as used in this chapter, shall, unless the context otherwise requires, mean all the departments of the commonwealth, except the department of banking and insurance, but including the divisions of banks and loan agencies, of insurance, of savings bank life insurance, and also including the several boards serving in the division of registration, the metropolitan district commission, and each of the executive offices created by chapters six A and seven.

Amended by St.1962, c. 757, § 52; St.1969, c. 704, § 36; St.1974, c. 835, § 33.

§ 9B. Certain permanent public employees; arbitrary removal; protection

No person permanently employed in any institution under the department of mental health, public health, public welfare, correction or youth services, or in the soldiers' homes in Massachusetts, except an employee, other than a nurse, rendering professional service, who is not classified under chapter thirty-one, and no maintenance employee permanently employed in any institution under the department of education, shall, after having actually performed the duties of any office or position continuously for a period of six months in such an institution or department, be discharged, removed, suspended, laid off, transferred from the latest permanent office or employment held by him without his consent, lowered in rank or compensation, nor shall his office or position be abolished, except for just cause and in the manner provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.

Added by St.1946, c. 524. Amended by St.1950, c. 717; St.1955, c. 643, § 5; St.1960, c. 611; St.1969, c. 838, § 5; St.1978, c. 393, § 9.

§ 9C. Mental or public health department employees; damages caused by patients; reimbursement

Any employee at the institutions under the control of the departments of mental health and public health whose uniform or other clothing, eyeglasses, dentures and the like are destroyed or damaged because of the violence of any patient under his care as determined by the appointing authority of said employee, shall have the same replaced or repaired by the department employing said employee free of any charge to such employee.

Added by St.1956, c. 537, § 1.

§ 9D. Teachers of certain state institutions; removal; lowering in rank

No person permanently employed as a teacher in any institution under the department of mental health, public health, public welfare, correction, or youth services, who is not classified under chapter thirty-one, shall, after having served as such teacher for a period of three years in such institution, be discharged, removed, suspended, laid off, transferred without his consent, lowered in rank or compensation, nor shall his office or position be abolished, except for just cause and in the manner provided by sections forty-one to forty-five, inclusive, of said chapter thirty-one.

Added by St.1958, c. 538, § 1. Amended by St.1969, c. 838, § 6; St.1978, c. 393, § 10.

ENVIRONMENTAL IMPACT OF PROJECTS, ETC., CONDUCTED BY AGENCIES

§ 61. Determination of impact by agencies; damage to environment; prevention or minimizing; definition applicable to this section and section 62

All agencies, departments, boards, commissions and authorities of the commonwealth shall review, evaluate, and determine the impact on the natural environment of all works, projects or activities conducted by them and shall use all practicable means and measures to minimize damage to the environment. Unless a clear contrary intent is manifested, all statutes shall be interpreted and administered so as to minimize and prevent damage to the environment. Any determination made by an agency of the commonwealth shall include a finding describing the environmental impact, if any, of the project and a finding that all feasible measures have been taken to avoid or minimize said impact.

As used in this section and section sixty-two, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth and shall include but not be limited to air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources; destruction of seashores, dunes, marine resources, underwater archaeological resources, wetlands, open spaces, natural areas, parks, or historic districts or sites. Damage to the environment shall not be construed to include any insignificant damage to or impairment of such resources.

Added by St.1972, c. 781, § 2. Amended by St.1973, c. 989, § 4.

§ 62. Definitions

For the purposes of sections sixty-one to sixty-two H, inclusive, the following words shall have the following meanings unless the context otherwise requires:

"Agency", an agency, department, board, commission or authority of the commonwealth, and any authority of any political subdivision which is specifically created as an authority under special or general law.

"Permit", a permit determination, order or other action, including the issuance of a lease, license, permit, certificate, variance, approval or other entitlement for use, granted to any person, firm or corporation, including trusts, voluntary association or other forms of business organizations by an agency for a project but shall not include a general entitlement to a person to carry on a trade or profession or to operate mechanical equipment which does not depend upon the location of such trade or operation.

"Person", a private person, firm or corporation, or any governmental entity which is not an agency.

"Project", work, project, or activity either directly undertaken by an agency, or if undertaken by a person, which seeks the provision of financial assistance by an agency, or requires the issuance of a permit by an agency but shall not include a grant of aid for medical services or personal support, such as welfare or unemployment funds, to an individual or a third party on behalf of an individual.

Added by St.1977, c. 947, § 1.

§ 62A. Notice of intent to apply; forms; certification of need for environmental impact statement; application of section

A person applying or intending to apply to an agency for a permit or for financial assistance for a project may, at any time prior to, but, in any event, shall no later than ten days after filing the first application for such permit or assistance notify the secretary of environmental affairs of the nature of the project and of such application, if any, on such forms as said secretary shall prescribe and shall transmit copies of said notification forms to such agency from which a permit or financial assistance is or may be sought. Any agency proposing a project may file said notification forms prior to the development of the project and shall file said forms no later than the secretary of environmental affairs shall by regulation prescribe. Within thirty days after issuance of notice of the receipt of such notification, the secretary shall consult with the person or agency proposing the project and the agency, if any, from which a permit or financial assistance is or may be sought and shall issue a certificate stating whether an environmental impact report is required. If a report is required, the secretary with the cooperation of said person and agency shall, within the above mentioned thirty day period, limit the scope of the report to those issues which by the nature and location of the project are likely to cause damage to the environment. The secretary shall determine the form, content, level of detail and alternatives required for the report. In the case of a permit application to an agency from a private person for a project for which financial assistance is not sought the scope of said report and alternatives considered therein shall be limited to that part of the project which is within the subject matter jurisdiction of the permit. Any finding required by section sixty-one shall be limited to those matters which are within the scope of the environmental impact report, if any, required by this section.

In the case of a major and complicated project, the secretary of environmental affairs, with the agreement of the agencies and persons who are proposing, providing public financial assistance for or issuing permits for a project subject to sections sixty-two to sixty-two H, inclusive, may establish a specific procedure for evaluation and review of the environmental impacts of said project. This section shall not apply to the placing, maintaining, repairing or relocating of poles, wires, conduits, cables, pipes and associated fixtures by public utility companies under section seventy-one of chapter one hundred and sixty-four and sections twenty-one to twenty-two, inclusive, of chapter one hundred and sixty-six.

Added by St.1977, c. 947, § 1.

§ 62B. Environmental impact reports; preparation and submission; funding

In the case of projects directly undertaken by an agency, the environmental impact report shall be prepared and submitted by the responsible agency. If two or more agencies are responsible, a joint report shall be prepared and submitted by the agency designated by the secretary of environmental affairs. In the case of projects which require a permit or financial assistance from an agency, said report shall be prepared and submitted by the person or agency seeking the permit or financial assistance.

Public funds made available for the purpose of design of or planning or undertaking a project subject to sections sixty-two to sixty-two H, inclusive, may be expended for the research, preparation, and publication of the report and expenses incidental thereto, and said funds may be transferred or otherwise may be made available to other agencies designated by the secretary of environmental affairs to evaluate the draft or final report.

An environmental impact report shall contain statements describing the nature and extent of the proposed project and its environmental impact; all measures being utilized to minimize environmental damage; any adverse short-term and long-term environmental consequences which cannot be avoided should the project be undertaken; and reasonable alternatives to the proposed project and their environmental consequences. The secretary shall encourage agencies and persons to commence preparation of reports during the initial planning and design phase of projects. Said report shall be prepared and disseminated to inform the originating or permitting agency, reviewing agencies, the appropriate regional planning commission, the attorney general and the public of the environmental consequences of state actions and the alternatives thereto prior to any commitment of state funds for and prior to the commencement of the project if undertaken by an agency or prior to the issuance of any permit or grant of financial assistance for the project if undertaken by a person.

Added by St.1977, c. 947, § 1.

§ 62C. Notice of availability of environmental impact statement; public and agency review

Any environmental impact report shall be submitted to the secretary of environmental affairs who shall issue public notice of the availability of such report.

A reviewing agency or person, and any agency which has jurisdiction by law or special expertise with respect to any environmental impact involved may submit written comments on any draft or final environmental impact report to the secretary of environmental affairs who shall affix any such comments which are timely received to his statement on such reports. Said reports and any comments submitted in review thereof shall be public documents.

No agency shall undertake a project which is not exempted by the provisions of any law and which may cause damage to the environment or grant a permit or financial assistance for such a project until sixty days after the secretary of environmental affairs issues such notice, provided that an agency or person may undertake research, planning, design and other preliminary work necessary to describe and evaluate such projects for the purposes of sections sixty-two to sixty-two H, inclusive.

There shall be a public and agency review period of thirty days from the notice of availability of any draft or final report, provided that the secretary of environmental affairs may extend the review period for a draft report on a major and complicated project for a period not to exceed thirty days. A statement of the secretary indicating whether or not in his judgment said report adequately and properly complies with the provisions of sections sixty-two to sixty-two H, inclusive, shall be issued within seven days after the public and agency review period. The approval or disapproval of said secretary of any such report shall not be required.

At least twice per month the secretary shall issue notice of all filings and of the availability of all reports received during the preceding half month, which notice shall be in such form as the secretary shall determine is reasonably suited to informing all interested agencies and persons of the receipt of such filings and the availability of such reports.

Added by St.1977, c. 947, § 1.

§ 62D. Permit applications; time for agency determination

Agencies shall act on permit applications within ninety days following issue of notice of availability of the final environmental impact report, within ninety days following issue of notice of the determination that a report is not required, or ninety days following the permit application, whichever is latest, unless otherwise provided by law.

Added by St.1977, c. 947, § 1.

§ 62E. Categories of projects and permits not requiring environmental impact reports; establishment

With the approval of the secretary of the executive office having jurisdiction over an agency, or if an agency is not within an executive office, with the approval of such agency, the secretary of environmental affairs shall establish general and special categories of projects and permits which shall or shall not require environmental impact reports based upon the scope and duration of potential impacts from the nature, size and location of said projects or portions thereof which require permits.

Added by St.1977, c. 947, § 1.

§ 62F. Emergencies; commencement of projects; land acquisition

A project may commence prior to compliance with sections sixty-two to sixty-two H, inclusive, if emergency action by a person or agency is essential to avoid or eliminate a threat to public health or safety, or a threat to any natural resources; provided, that wherever practicable, the agency or person shall obtain the prior approval of the secretary of environmental affairs. Following commencement of any such project, the agency or person shall promptly, but in any case within sixty days, commence compliance with the provisions of sections sixty-two to sixty-two H, inclusive.

In the case of an urban renewal project proposed under chapters one hundred and twenty-one A or one hundred and twenty-one B, the specific procedure under section sixty-two A may permit land acquisition and other actions required for land acquisition to take place prior to the publication of the final environmental impact report provided that the secretary has issued notice of availability of an interim environmental impact report which demonstrates to the satisfaction of said secretary that an urban renewal project may be carried out on the proposed land with appropriate constraints as may be necessary to minimize and prevent damage to the environment.

Added by St.1977, c. 947, § 1.

§ 62G. Federal environmental impact statements in lieu of reports

In the case of projects for which an environmental impact statement is required under the National Environmental Policy Act of 1969,[1] draft and final federal environmental impact statements may be submitted in lieu of environmental impact reports.

Added by St.1977, c. 947, § 1.

[1] 42 U.S.C.A. § 4321 et seq.

§ 62H. Notice of intent to commence project without environmental impact report upon finding of report needed; allegation of improper determination; concealment of facts; rules and regulations

An agency or person intending to commence an action or proceeding alleging an improper determination of whether a project requires the preparation of an environmental impact report under section sixty-two A, shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of such determination. An agency or person intending to commence an action or proceeding alleging that a final environmental impact report fails to comply with the requirements of sections sixty-two to sixty-two G, inclusive, shall first provide notice of intention to commence such action or proceeding within sixty days of issuance of notice of availability of said final environmental impact report pursuant to section sixty-two C. Said notices of intention shall be in such form as the secretary of environmental affairs shall prescribe, shall identify with particularity the issues to be considered in any such action or proceeding, shall be in lieu of the notice and waiting period required by section seven A of chapter two hundred and fourteen, and shall be provided to the attorney general, the agency or person proposing the project and the secretary of environmental affairs.

Any action or proceeding alleging an improper determination that a project requires the preparation of an environmental impact report under section sixty-two A shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency or no later than sixty days after issuance of notice of such determination, whichever occurs later, for a private project, or no later than one hundred and twenty days after issuance of notice of such determination for a public project. Any action or proceeding alleging that a final environmental impact report fails to comply with the provisions of sections sixty-two to sixty-two G, inclusive, shall commence no later than thirty days following the first issuance of a permit or grant of financial assistance by an agency for a private project or no later than one hundred and twenty days after issuance of notice of availability of said final environmental impact report under section sixty-two C, for a public project.

No allegation shall be made in any action or proceeding under this section unless the matter complained of was raised at the appropriate point in the administrative review procedures; provided that a matter may be raised upon a showing that it is material and that it was not reasonably possible with due diligence to have raised it during such procedures or that the matter sought to be raised is of critical importance to the environmental impact of the project.

If a court determines that an agency or person proposing a project has knowingly concealed a material fact or knowingly submitted false information in any form or report required under sections sixty-two to sixty-two H, inclusive, limits on the manner and time in which actions or proceedings may be commenced shall not apply and the secretary of environmental affairs may require the preparation and review of such forms or reports as may be necessary to correct any deficient form or report.

The secretary of environmental affairs shall, after consultation with other secretaries of executive offices and with agencies not within executive offices, promulgate reasonable rules and regulations to carry out the purposes of sections sixty-two to sixty-two H, inclusive.

Added by St.1977, c. 947, § 1.

CONVERSION OF HOSPITALS

§ 64. Conversion of hospitals; approval of general court

No mental health hospital or public health hospital shall be converted to use by the department of correction without the express approval of the general court.

Added by St.1977, c. 920, § 20.

CHAPTER 30A

STATE ADMINISTRATIVE PROCEDURE

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§ 1. Definitions

For the purposes of this chapter—

(1) "Adjudicatory proceeding" means a proceeding before an agency in which the legal rights, duties or privileges of specifically named persons are required by constitutional right or by any provision of the General Laws to be determined after opportunity for an agency hearing. Without enlarging the scope of this definition, adjudicatory proceeding does not include (*a*) proceedings solely to determine whether the agency shall institute or recommend institution of proceedings in a court; or (*b*) proceedings for the arbitration of labor disputes voluntarily submitted by the parties to such disputes; or (*c*) proceedings for the disposition of grievances of employees of the commonwealth; or (*d*) proceedings to classify or reclassify, or to allocate or reallocate, appointive offices and positions in the government of the commonwealth; or (*e*) proceedings to determine the equalized valuations of the several cities and towns; or (*f*) proceedings for the determination of wages under section twenty-six T of chapter one hundred and twenty-one [1].

(2) "Agency", any department, board, commission, division or authority of the state government or subdivision of any of the foregoing, or official of the state government, authorized by law to make regulations or to conduct adjudicatory proceedings, but does not in-

clude the following: the legislative and judicial departments; the governor and council; military or naval boards, commissions or officials; the department of correction; the department of youth services; the parole board; the division of industrial accidents of the department of labor and industries; the personnel administrator; the civil service commission; and the appellate tax board.

(3) "Party" to an adjudicatory proceeding means:—(*a*) the specifically named persons whose legal rights, duties or privileges are being determined in the proceeding; and (*b*) any other person who as a matter of constitutional right or by any provision of the General Laws is entitled to participate fully in the proceeding, and who upon notice as required in paragraph (1) of section eleven makes an appearance; and (*c*) any other person allowed by the agency to intervene as a party. Agencies may by regulation not inconsistent with this section further define the classes of persons who may become parties.

(4) "Person" includes all political subdivisions of the commonwealth.

(5) "Regulation" includes the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it, but does not include (*a*) advisory rulings issued under section eight; or (*b*) regulations concerning only the internal management or discipline of the adopting agency or any other agency, and not substantially affecting the rights of or the procedures available to the public or that portion of the public affected by the agency's activities; or [(*c*) deleted by St.1974, c. 361, § 1;] or (*d*) regulations relating to the use of public works, including streets and highways, when the substance of such regulations is indicated to the public by means of signs or signals; or (*e*) decisions issued in adjudicatory proceedings.

(6) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion.

Added by St.1954, c. 681, § 1. Amended by St.1959, c. 511, § 1; St.1965, c. 725; St.1966, c. 14, § 42; St.1966, c. 497; St.1968, c. 120, § 1; St.1969, c. 808, § 2; St.1969, c. 838, § 8; St.1970, c. 712, § 2; St.1974, c. 361, § 1; St. 1974, c. 835, § 50; St.1975, c. 817, § 1; St.1978, c. 552, § 13; St.1979, c. 795, § 3.

[1] Repealed. See, now, c. 121B, § 12.

§ 1A. Application of this chapter to department of correction

The department of correction shall be subject to sections one through eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said department from the definition of the word "agency" in section one.

Added by St.1972, c. 777, § 3.

§ 2. Regulations requiring hearings; adoptions, amendments or repeals

A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (*a*) violation of the regulation is punishable by fine or imprisonment; or, (*b*) a public hearing is required by the enabling legislation of the agency or by any other law; or, (*c*) a public hearing is required as a matter of constitutional right.

Prior to the adoption, amendment, or repeal of any regulation as to which a public hearing is required, an agency shall hold a public hearing. Within the time specified by any law, or, if no time is specified, then at least twenty-one days prior to the date of the public hearing, the agency shall give notice of such hearing by (*a*) publishing notice of such hearing in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (*b*) notifying any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (*c*) notifying any person or group filing a written request for notice of agency rule making hearings such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or group required to be notified; and (*d*) filing a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of the public hearing; either state the express terms or describe the substance of the proposed regulation; and include any additional matter required by any law.

The public hearing shall comply with any requirements imposed by law, but shall not be subject to the provisions of this chapter governing adjudicatory proceedings.

If the agency finds that immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and a public hearing would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless during that time the agency gives notice and holds a public hearing as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they become effective.

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 3; St.1976, c. 459, § 2.

§ 3. Regulations not requiring hearings; adoptions, amendments or repeals

Prior to the adoption, amendment, or repeal of any regulation for which a public hearing is not required under section two, the agency shall give notice and afford interested persons an opportunity to present data, views, or arguments as follows:

The agency shall, within the time specified by law, or, if no time is specified, then at least twenty-one days prior to its proposed action: (*a*) publish notice of its proposed action in such manner as is specified by any law, or, if no manner is specified, then in such newspapers, and, where appropriate, in such trade, industry or professional publications as the agency may select; (*b*) notify any person to whom specific notice must be given, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person required to be notified; (*c*) notify any person or group filing written request for notice of agency rule making proceedings, such request to be renewed annually in December, such notice to be given by delivering or mailing a copy of the notice to the last known address of the person or groups required to be notified; and (*d*) file a copy of such notice with the state secretary.

The notice shall refer to the statutory authority under which the action is proposed; give the time and place of any public hearing or state the anticipated time of agency action; state the manner in which data views, or arguments may be submitted to the agency by any interested person; either state the express terms or describe the substance of the proposed action; and include any additional matter required by any law.

The agency shall afford interested persons an opportunity to present data, views or arguments in regard to the proposed action orally or in writing. If the agency finds that oral presentation is unnecessary or impracticable, it may require that presentation be made in writing.

If the agency finds that the immediate adoption, amendment or repeal of a regulation is necessary for the preservation of the public health, safety or general welfare, and that observance of the requirements of notice and affording interested persons an opportunity to present data, views, or arguments would be contrary to the public interest, the agency may dispense with such requirements and adopt, amend or repeal the regulation as an emergency regulation. The agency's finding and a brief statement of the reasons for its finding shall be incorporated in the emergency regulation as filed with the state secretary under section five. An emergency regulation shall not remain in effect for longer than three months unless, during that time, the agency gives notice and affords interested persons an opportunity to present data, views, or arguments as required in this section, and files notice of compliance with the state secretary.

This section does not relieve any agency from compliance with any law requiring that its regulations be approved by designated persons or bodies before they may become effective.

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 4; St.1974, c. 361, § 2; St.1976, c. 459, § 3.

§ 3A. Publication of required notices; effect of noncompliance

Notices filed in accordance with sections two and three shall be published by the state secretary as required by section six no later than one week prior to the date of any hearing or action to which such notices relate. Failure to comply with this requirement shall be deemed a noncompliance with the provisions of said sections, and the hearings or other agency actions conducted thereunder shall be invalid.

Added by St.1976, c. 459, § 3.

§ 4. Petitions for adoption, etc., of regulations

Any interested person may petition an agency requesting the adoption, amendment or repeal of any regulation, and may accompany his petition with such data, views and arguments as he thinks pertinent. Each agency shall prescribe by regulation the procedure for the submission, consideration and disposition of such petitions.

Added by St.1954, c. 681, § 1.

§ 5. Regulations and related information; filing; compliance with requirements

Two attested copies of the regulations of each agency shall be filed with the state secretary together with a citation of the law by authority of which the same purport to have been issued, and together with the dates of approval by other boards or agencies if required and any other information necessary to show compliance with statutory requirements relative to issuance of such regulations. Upon receipt of agency regulations prepared in accordance with this chapter, the state secretary shall accept them for filing and endorse thereon the time and date of the filing.

The state secretary shall make and publish rules and regulations, not otherwise inconsistent with law, with respect to the deadlines to be met and the form to be employed by any agency in preparing and filing regulations, hearing schedules and any other materials which the secretary may require. Compliance with such rules and regulations shall be a condition precedent to the effectiveness of agency regulations.

Added by St.1954, c. 681, § 1. Amended by St.1969, c. 808, § 5; St.1970, c. 712, § 3; St.1976, c. 459, § 4.

§ 6. Massachusetts Register; publication of filed documents and regulations; legal effect; distribution of issues

Documents required or authorized to be published by this section shall be printed and distributed by the state secretary in a serial publication entitled the "Massachusetts Register". The state secretary shall contract and arrange, subject to all pertinent statutes, for the biweekly printing and distribution of the Massachusetts Register. The prices to be charged for the Massachusetts Register may be set without reference to the statutory charges for public documents fixed by chapter two hundred and sixty-two.

There shall be published in the Massachusetts Register the following documents: (1) executive orders, except those not having general applicability and legal effect or effective only against state agencies or persons in their capacity as officers, agents or employees thereof; (2) all regulations filed in accordance with section five; (3) all notices filed in accordance with sections two and three, except that the secretary may summarize the content of any notice filed; provided, however, that he indicate that the full text of the notice may be inspected and copied in the office of the state secretary during business hours; and (4) any other item or portion thereof which the state secretary deems to be of sufficient public interest.

Each biweekly issue shall contain all documents required or authorized to be published, filed with the state secretary up to the day fixed by the secretary as the printing deadline for that issue, except that the secretary may omit from the biweekly issue of the register any document which he deems unduly cumbersome or expensive to publish. In such cases, he shall describe the nature of the omitted document and shall publish a supplemental issue of the register containing the text of the document as soon as practicable and in any event within thirty days. Supplemental issues shall be published as the state secretary deems necessary, and shall in all ways have the full force and effect of the regular biweekly issues of the register.

Regulations other than emergency regulations, which are adopted under section two and three, shall become effective only when published in accordance with this section, or, in the case of any regulation as to which a later effective date is required by any law, or is specified in such regulation by the agency adopting the same, upon such later date or upon such publication, whichever last occurs. Emergency regulations shall become effective when filed with the state secretary and shall remain in effect no more than three months unless they are thereafter promulgated pursuant to the procedures outlined in sections two and three.

The state secretary shall make available upon request of any person or group the biweekly issues of the Massachusetts Register. He shall transmit, without charge, a copy of each issue thereof to (1) the clerk of the house of representatives; (2) the clerk of the senate; (3) the house counsel and senate counsel; and (4) the state librarian.

The state secretary shall mail upon receipt of the subscription price a sheet containing the table of contents or other information sufficient to enable the reader to determine whether he wishes to purchase that issue of the register.

The publication in the Massachusetts Register of a document creates a rebuttable presumption (1) that it was duly issued, prescribed, or promulgated; (2) that all the requirements of this chapter and regulations prescribed under it relative to the document have been complied with; and (3) that the text of the regulations as published in the Massachusetts Register is a true copy of the attested regulation as filed by the agency.

For the purpose of this section and section six A the word "regulation" shall not include any regulation whose principal purpose and effect is to prescribe or approve rates chargeable for goods, services, or other things by specifically named persons and shall not include any portion of an existing publication which has been adopted as and incorporated by reference in a regulation of any agency, and which the state secretary determines is unnecessary to republish by reason of its already being reasonably available to that portion of the public affected by said agency's activities.

The contents of the Massachusetts Register shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number.

Added by St.1954, c. 681, § 1. Amended by St.1962, c. 545; St.1969, c. 808, § 6; St.1970, c. 168, § 1A; St.1970, c. 712, § 4; St.1971, c. 862, § 2; St. 1971, c. 1065, §§ 1, 2; St.1974, c. 66; St.1975, c. 29; St.1976, c. 459, § 5.

§ 6A. Code of Massachusetts Regulations; first publication

Prior to publication of the first issue of the Massachusetts Register, the state secretary shall first cause to be published all currently effective agency regulations in a special publication of the Massachusetts Register to be designated as the "Code of Massachusetts Regulations".

The state secretary shall regulate the supplementation and the collation and republication of the printed codification with a view to keeping the Code of Massachusetts Regulations as current as possible.

Added by St.1976, c. 459, § 5.

§ 6B. Agencies to purchase register issues; public access

Each agency shall purchase a copy or copies of the issues of the register which contain regulations or notices of that agency and make at least one copy readily available in a prominent place at each of the agency's offices for the purpose of public inspection and copying. To assist interested persons dealing with it, each agency having authority to adopt regulations shall prepare and make available for inspection in a prominent place at each of its offices serving the public a list of its regulations and a description of its central and field organization, including the location of persons and places from which the public can secure information, make submittals or requests or obtain decisions. All such lists and descriptions shall be kept current.

Added by St.1976, c. 459, § 5.

§ 6C. Failure to comply with § 6B; report

If the state secretary finds that any agency fails to comply with any provision of section six B, he shall report the matter to the governor and the attorney general.

Added by St.1976, c. 459, § 5.

§ 7. Judicial review of regulations

Unless an exclusive mode of review is provided by law, judicial review of any regulation or of the sufficiency of the reasons for its adoption as an emergency regulation may be had through an action for declaratory relief in the manner and to the extent provided under chapter two hundred and thirty-one A.

Added by St.1954, c. 681, § 1. Amended by St.1973, c. 1114, § 1; St.1974, c. 361, § 3.

§ 7A. Repealed by St.1970, c. 712, § 7

§ 8. Advisory rulings by agencies

On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency. In issuing the advisory ruling, the agency need not comply with the requirements of this chapter with respect to regulations.

Added by St.1954, c. 681, § 1.

§ 9. Standard rules; substitute rules; amendments to rules

The commissioner of administration shall file with the state secretary prior to July first, nineteen hundred and seventy-eight, rules and regulations for the conduct of adjudicatory proceedings which shall be promulgated pursuant to the rule making procedures of this chapter and which shall be in effect for all state agencies within the executive offices except as provided in this section. Rules established by the commissioner of administration pursuant to the provisions of this section shall be referred to as the "standard rules". Said standard rules shall include, but not be limited to, provisions relating to the keeping of records of adjudicatory proceedings, the form of a pleading and answer, the form and service of motions, the rights of intervention of persons, procedures for taking depositions, conducting hearings, providing transcripts, submission of oral and written testimony to the agency, and administrative review of the agency's decision. Said standard rules shall take effect ninety days after they are published by the secretary in accordance with the provisions of section six, and shall govern adjudicatory proceedings commenced after said ninety days except as otherwise provided in this section.

Agencies within each of the executive offices may with the approval of the commissioner of administration, file with the secretary rules for the conduct of adjudicatory proceedings in said agency which substitute in whole or in part, or are additions to the standard rules filed by the commissioner. Such substitute rules shall be promulgated pursuant to the rule making procedures of this chapter and shall be filed with the state secretary within sixty days of the publication of the standard rules which shall govern adjudicatory proceedings commenced after ninety days from the publication thereof by the secretary, and shall take effect at the same time as the standard rules.

Thereafter, at any time the commissioner may file amendments to the standard rules. Agencies within any of the executive offices may subject to the approval of the commissioner of administration file substitute rules. Such amendments to the standard rules and such substitute rules shall take effect in accordance with section six.

Added by St.1954, c. 681, § 1. Amended by St.1978, c. 60, § 1.

§ 10. Adjudicatory proceedings; appeals

In conducting adjudicatory proceedings, as defined in this chapter, agencies shall afford all parties an opportunity for full and fair hearing. Unless otherwise provided by any law, agencies may (1) place on any party the responsibility of requesting a hearing if the agency notifies him in writing of his right to a hearing and of his responsibility to request the hearing; (2) make informal disposition of any adjudicatory proceeding by stipulation, agreed settlement, consent order or default; (3) limit the issues to be heard or vary the procedures prescribed by section eleven, if the parties agree to such limitation or variation; and (4) allow any person showing that he may be substantially and specifically affected by the proceeding to intervene as a party in the whole or any portion of the proceeding, and allow any other interested person to participate by presentation of argument orally or in writing, or for any other limited purpose, as the agency may order.

When a party to an adjudicatory proceeding has the opportunity, by provision of any law or by regulation, to obtain more than one agency hearing on the same question, whether before the same agency or before different agencies, it shall be sufficient if the last hearing available to the party complies with the requirements of this chapter, and the earlier hearings need not so comply.

When a party has the opportunity to obtain an agency hearing, followed by one or more appeals before the same agency or before different agencies, such appeals being limited to the record made at the hearing, the appeal procedure need not comply with any requirement of this chapter for the conduct of adjudicatory proceedings except paragraphs (7) and (8) of section eleven.

When, under a provision of any law, a hearing is required only upon direction of an agency or upon request made in accordance with such provision by a person entitled to make such request, the requirements of this chapter governing the conduct of adjudicatory proceedings shall not apply unless and until such direction or request is in fact made.

Added by St.1954, c. 681, § 1. Amended by St.1977, c. 965; St.1978, c. 60, § 1.

§ 10A. Damage to environment; intervention in adjudicatory proceeding; procedure

Notwithstanding the provisions of section ten, not less than ten persons may intervene in any adjudicatory proceeding as defined in section one, in which damage to the environment as defined in section seven A of chapter two hundred and fourteen, is or might be at issue; provided, however, that such intervention shall be limited to the issue of damage to the environment and the elimination or reduction thereof in order that any decision in such proceeding shall include the disposition of such issue. Notwithstanding any other provision of this chapter, any intervener under this section may introduce evidence, present witnesses and make written or oral argument, except that the agency may exclude repetitive or irrelevant material. Any such intervener shall be considered a party to the original proceeding for the purposes of notice and any other procedural rights applicable to such proceeding under the provisions of this chapter, including specifically the right of appeal.

Added by St.1971, c. 732, § 2. Amended by St.1973, c. 1114, § 2.

§ 11. **Adjudicatory proceedings; additional requirements**

In addition to other requirements imposed by law and subject to the provisions of section ten, agencies shall conduct adjudicatory proceedings in compliance with the following requirements:—

(1) Reasonable notice of the hearing shall be accorded all parties and shall include statements of the time and place of the hearing. Parties shall have sufficient notice of the issues involved to afford them reasonable opportunity to prepare and present evidence and argument. If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

(2) Unless otherwise provided by any law, agencies need not observe the rules of evidence observed by courts, but shall observe the rules of privilege recognized by law. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Agencies may exclude unduly repetitious evidence, whether offered on direct examination or cross-examination of witnesses.

(3) Every party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.

(4) All evidence, including any records, investigation reports, and documents in the possession of the agency of which it desires to avail itself as evidence in making a decision, shall be offered and made a part of the record in the proceeding, and no other factual information or evidence shall be considered, except as provided in paragraph (5) of this section. Documentary evidence may be received in evidence in the form of copies or excerpts, or by incorporation by reference.

(5) Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may

utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to them.

(6) Agencies shall make available an official record, which shall include testimony and exhibits, and which may be in narrative form, but the agency need not arrange to transcribe shorthand notes or sound recordings unless requested by a party. If so requested, the agency may, unless otherwise provided by any law, require the party to pay the reasonable costs of the transcript before the agency makes the transcript available to the party.

(7) If a majority of the officials of the agency who are to render the final decision have neither heard nor read the evidence, such decision, if adverse to any party other than the agency, shall be made only after *(a)* a tentative or proposed decision is delivered or mailed to the parties containing a statement of reasons and including determination of each issue of fact or law necessary to the tentative or proposed decision; and *(b)* an opportunity is afforded each party adversely affected to file objections and to present argument, either orally or in writing as the agency may order, to a majority of the officials who are to render the final decision. The agency may by regulation provide that, unless parties make written request in advance for the tentative or proposed decision, the agency shall not be bound to comply with the procedures of this paragraph.

(8) Every agency decision shall be in writing or stated in the record. The decision shall be accompanied by a statement of reasons for the decision, including determination of each issue of fact or law necessary to the decision, unless the General Laws provide that the agency need not prepare such statement in the absence of a timely request to do so. Parties to the proceeding shall be notified in person or by mail of the decision; of their rights to review or appeal the decision within the agency or before the courts, as the case may be; and of the time limits on their rights to review or appeal. A copy of the decision and of the statement of reasons, if prepared, shall be delivered or mailed upon request to each party and to his attorney of record.

Added by St.1954, c. 681, § 1.

§ 11A. Definitions

The following terms as used in section eleven B shall have the following meanings:

"Deliberation", a verbal exchange between a quorum of members of a governmental body attempting to arrive at a decision on any public business within its jurisdiction.

"Emergency", a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

"Executive session", any meeting or part of a meeting of a governmental body which is closed to certain persons for deliberation on certain matters.

"Governmental body", a state board, committee, special committee, subcommittee or commission, however created or constituted within the executive or legislative branch of the commonwealth or the governing board or body of any authority established by the general court to serve a public purpose in the commonwealth or any part thereof, but shall not include the general court or the committees or recess commissions thereof, or bodies of the judicial branch, or any meeting of a quasi-judicial board or commission held for the sole purpose of making a decision required in an adjudicatory proceeding brought before it, nor shall it include the board of bank incorporation and the General Insurance Guaranty Fund.

"Made public", when the records of an executive session have been approved by the members of the respective governmental body attending such session for release to the public and notice of such approval has been entered in the records of such body.

"Meeting", any corporal convening and deliberation of a governmental body for which a quorum is required in order to make a decision at which any public policy matter over which the governmental body has supervision, control, jurisdiction or advisory power is discussed or considered; but shall not include any on-site inspection of any project or program.

"Quorum", a simple majority of a governmental body unless otherwise defined by constitution, charter, rule or law applicable to such governing body.

Added by St.1975, c. 303, § 1. Amended by St.1976, c. 397, § 1; St.1978, c. 372, § 1; St.1978, c. 514, § 11.

§ 11A½. Open meetings of governmental bodies; executive sessions; exceptions; notice; records; failure to comply; orders; nature of rights of individual

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members of the governmental body have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitations contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and after a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual to be discussed in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties.

A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(*a*) to be present at such executive session during discussions or considerations which involve that individual.

(*b*) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(*c*) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(*a*) to be present at such executive session during discussions or considerations which involve that individual.

(*b*) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(*c*) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, and to conduct collective bargaining sessions.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

This section shall not apply to any chance meeting or social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction, or advisory power.

Except in an emergency, a notice of every meeting of a governmental body subject to this section shall be filed with the secretary of state, and a copy thereof posted in the office of the executive office for administration and finance at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to the time of such meeting. The notice shall include the date, time and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meetings.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, a member shall be furnished by the state secretary with a copy of this section. Each member shall sign a written acknowledgement that he has been provided with such a copy.

The attorney general shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions of this section, any justice of the supreme judicial court or any justice of the superior court sitting in the county in which the governmental body customarily meets or in the absence of such sitting of court then any justice of the superior court sitting in Suffolk county shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provision at future meetings. Any such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney for the district in which the governmental body is located. The order of notice on the complaint shall be heard no later than ten days after the filing thereof or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such complaint were in accordance with and authorized by this section, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

Added by St.1975, c. 303, § 1. Amended by St.1976, c. 397, §§ 2, 3. Renumbered and amended by St.1977, c. 829, § 2. Amended by St.1978, c. 372, §§ 2 to 4.

§ 11B. Studies of state boards, commissions and authorities; notice to city or town affected for its participation

All state boards and commissions and the governing boards or bodies of all such authorities which conduct a study affecting or relating to the use of an area of a city or town shall notify the mayor or city manager, if any, of the city and the presiding officer of the city council, or the chairman of the board of selectmen of the town, of the study and shall invite their participation therein. No determination shall be made and no results of the study shall be released to the public until such notification has been given with a reasonable opportunity to participate in it.

Added by St.1971, c. 602.

§ 11C. Hearings in municipalities

Any agency which is required by law to conduct hearings, shall, if the subject matter of such hearing solely concerns a single municipality, hold such hearing or a substantial portion thereof in such municipality upon receipt of a written request from the mayor of a city, the board of selectmen of a town, or the council of a municipality having a manager-council form of government received by the agency not less than fourteen days before the scheduled date of the hearing. If the subject matter of such hearing solely concerns a particular geographic area of the commonwealth, the agency shall hold such hearing or a substantial portion thereof within such geographic area upon receipt of written requests from a majority of the mayors, boards of selectmen and councils of the cities and towns which constitute such geographic area received by the agency not less than fourteen days before the scheduled date of the hearing. The municipality in which the hearing is held shall provide a hearing room and other necessary facilities for such hearing. If no suitable place for holding such hearing is available in the municipality, the municipality may arrange for the holding of the hearing in another city or town that is reasonably convenient. This section shall not apply to hearings held as part of an adjudicatory proceeding, but this sentence shall not be construed to restrict an agency from holding an adjudicatory hearing in any appropriate location.

Added by St.1977, c. 895.

§ 12. Adjudicatory proceedings; subpoenas

In conducting adjudicatory proceedings, agencies shall issue, vacate, modify and enforce subpoenas in accordance with the following provisions:—

(1) Agencies shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any

evidence, including books, records, correspondence or documents, relating to any matter in question in the proceeding. Agencies may administer oaths and affirmations, examine witnesses, and receive evidence. The power to issue subpoenas may be exercised by any member of the agency or by any person or persons designated by the agency for such purpose.

(2) The agency may prescribe the form of subpoena, but it shall adhere, in so far as practicable, to the form used in civil cases before the courts. Witnesses shall be summoned in the same manner as witnesses in civil cases before the courts, unless another manner is provided by any law. Witnesses summoned shall be paid the same fees for attendance and travel as in civil cases before the courts, unless otherwise provided by any law.

(3) Any party to an adjudicatory proceeding shall be entitled as of right to the issue of subpoenas in the name of the agency conducting the proceeding. The party may have such subpoenas issued by a notary public or justice of the peace, or he may make written application to the agency, which shall forthwith issue the subpoenas requested. However issued, the subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. Unless otherwise provided by any law, the agency need not pay fees for attendance and travel to witnesses summoned by a party.

(4) Any witness summoned may petition the agency to vacate or modify a subpoena issued in its name. The agency shall give prompt notice to the party, if any, who requested issuance of the subpoena. After such investigation as the agency considers appropriate it may grant the petition in whole or part upon a finding that the testimony, or the evidence whose production is required, does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested.

(5) Upon the failure of any person to comply with a subpoena issued in the name of the agency and not revoked or modified by the agency as provided in this section, any justice of the superior court, upon application by the agency or by the party who requested that the subpoena be issued, may in his discretion issue an order requiring the attendance of such person before the agency and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished by the court for contempt.

Added by St.1954, c. 681, § 1.

§ 13. Licenses; revocation, etc.; hearings; exceptions

"License", as used in this section, includes any license, permit, certificate, registration, charter, authority or similar form of permission required by law.

Except as otherwise provided in this section, no agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with sections ten, eleven and twelve. If a licensee has, in accordance with any law and with agency regulations, made timely and sufficient application for a renewal, his license shall not expire until his application has been finally determined by the agency. Any agency that has authority to suspend a license without first holding a hearing shall promptly upon exercising such authority afford the licensee an opportunity for hearing in conformity with sections ten, eleven and twelve.

This section shall not apply—

(1) Where a provision of the General Laws expressly provides that an agency is not required to grant a hearing in regard to revocation, suspension or refusal to renew a license, as the case may be; or

(2) Where the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a court conviction or judgment; or

(3) Where the revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules, or applications, or to pay lawfully prescribed fees, or to maintain insurance coverage as required by any law or by regulation; or

(4) Where there is a refusal to renew the license of a foreign insurance company by the commissioner of insurance, under authority of section one hundred and fifty-one of chapter one hundred and seventy-five or where there is a revocation of the license of a foreign insurance company by said commissioner under authority of section five of chapter one hundred and seventy-five, if such refusal or revocation is upon the grounds that such company is insolvent or is in an unsound financial condition, or that its condition or management is such as to render its further transaction of business hazardous to the public or its policyholders, or that the amount of its funds, net cash or contingent assets is deficient or that its capital stock or deposit or guaranty capital or guaranty fund is impaired, as set forth in section twenty-three A of said chapter one hundred and seventy-five, or that such capital stock, deposit or guaranty capital or guaranty fund has been reduced below the amount required by section one hundred and fifty-one of said chapter one hundred and seventy-five.

Added by St.1954, c. 681, § 1. Amended by St.1960, c. 245; St.1962, c. 179.

§ 14. Judicial review

Except so far as any provision of law expressly precludes judicial review, any person or appointing authority aggrieved by a final decision of any agency in an adjudicatory proceeding, whether such decision is affirmative or negative in form, shall be entitled to a judicial review thereof, as follows:

Where a statutory form of judicial review or appeal is provided such statutory form shall govern in all respects, except as to standards for review. The standards for review shall be those set forth in paragraph (7) of this section, except so far as statutes provide for review by trial de novo. Insofar as the statutory form of judicial review or appeal is silent as to procedures provided in this section, the provisions of this section shall govern such procedures.

Where no statutory form of judicial review or appeal is provided, judicial review shall be obtained by means of a civil action, as follows:

(1) Proceedings for judicial review of an agency decision shall be instituted in the superior court for the county (a) where the plaintiffs or any of them reside or have their principal place of business within the commonwealth, or (b) where the agency has its principal office, or (c) of Suffolk. The court may grant a change of venue upon good cause shown. The action shall, except as provided in section thirty-two of chapter six, be commenced in the court within thirty days after receipt of notice of the final decision of the agency or if a petition for rehearing has been timely filed with the agency, within thirty days after receipt of notice of agency denial of such petition for rehearing. Upon application made within the thirty-day period or any extension thereof, the court may for good cause shown extend the time.

(2) Service shall be made upon the agency and each party to the agency proceeding in accordance with the Massachusetts Rules of Civil Procedure governing service of process. For the purpose of such service the agency upon request shall certify to the plaintiff the names and addresses of all such parties as disclosed by its records, and service upon parties so certified shall be sufficient. All parties to the proceeding before the agency shall have the right to intervene in the proceeding for review. The court may in its discretion permit other interested persons to intervene.

(3) The commencement of an action shall not operate as a stay of enforcement of the agency decision, but the agency may stay enforcement, and the reviewing court may order a stay upon such terms as it considers proper.

(4) The agency shall, by way of answer, file in the court the original or a certified copy of the record of the proceeding under review. The record shall consist of (a) the entire proceedings, or (b) such portions thereof as the agency and the parties may stipulate, or (c) a statement of the case agreed to by the agency and the parties. The expense of preparing the record may be assessed as part of the costs in the case, and the court may, regardless of the outcome of the

case, assess any one unreasonably refusing to stipulate to limit the record, for the additional expenses of preparation caused by such refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(5) The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken in the court.

(6) If application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material to the issues in the case, and that there was good reason for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of such additional evidence and shall file with the reviewing court, to become part of the record, the additional evidence, together with any modified or new findings or decision.

(7) The court may affirm the decision of the agency, or remand the matter for further proceedings before the agency; or the court may set aside or modify the decision, or compel any action unlawfully withheld or unreasonably delayed, if it determines that the substantial rights of any party may have been prejudiced because the agency decision is—

(*a*) In violation of constitutional provisions; or

(*b*) In excess of the statutory authority or jurisdiction of the agency; or

(*c*) Based upon an error of law; or

(*d*) Made upon unlawful procedure; or

(*e*) Unsupported by substantial evidence; or

(*f*) Unwarranted by facts found by the court on the record as submitted or as amplified under paragraph (6) of this section, in those instances where the court is constitutionally required to make independent findings of fact; or

(*g*) Arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law.

The court shall make the foregoing determinations upon consideration of the entire record, or such portions of the record as may be cited by the parties. The court shall give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.

If the court finds that the action of the appointing authority in discharging, removing, suspending, laying off, lowering in rank or compensation or abolishing his position, or the action of the commission confirming the action taken by the appointing authority, was not justified, the employee shall be reinstated in his office or position without loss of compensation and the court shall assess reasonable costs against the employer.

Added by St.1954, c. 681, § 1. Amended by St.1957, c. 193, § 1; St.1968, c. 637, § 1; St.1973, c. 1114, § 3; St.1976, c. 411, §§ 1, 2.

§ 15. Supreme judicial court and appeals court; concurrent jurisdiction

The supreme judicial court and the appeals court shall have concurrent jurisdiction to review any proceedings had, determinations made, and orders or judgments entered in the superior court pursuant to section fourteen. The supreme judicial court or the appeals court, subject to the provisions of section thirteen of chapter two hundred and eleven A, may by rule vary the procedure authorized or required for such review upon a finding that the review by the court will thereby be made more simple, speedy and effective.

Added by St.1954, c. 681, § 1. Amended by St.1973, c. 1114, § 3.

§ 16. Supreme judicial court; powers

The supreme judicial court shall have the power to make rules of pleading, practice and procedure supplementary to and not inconsistent with the provisions of this chapter relating to judicial review of administrative action, and to amend such rules, for the purpose of securing a simple, speedy and effective judicial review of administrative action.

Added by St.1954, c. 681, § 1.

§ 17. Partial invalidity; effect

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application.

Added by St.1954, c. 681, § 1.

TITLE V

MILITIA

CHAPTER 33

MILITIA

III. PERSONNEL

OFFICERS

Sec.
21. Legal, medical, dental or veterinary officers; qualifications.

IV. OPERATIONS AND TRAINING

42. Use of militia; public catastrophe or natural disaster; forms of precept.

III. PERSONNEL

OFFICERS

§ 21. Legal, medical, dental or veterinary officers; qualifications.

No person shall be eligible to appointment, or be appointed, as a legal, medical, dental or veterinary commissioned officer unless he is duly registered in accordance with the laws of the commonwealth, and complies with its laws relative to the practice of his profession.

Added by St.1954, c. 590, § 1.

IV. OPERATIONS AND TRAINING

§ 42. Use of militia; public castastrophe or natural disaster; form of precept.

In case of public catastrophe or natural disaster, other than referred to in section forty-one, and when the usual police provisions are inadequate to preserve order and afford protection to persons and property, and the fact appears to the commander-in-chief, to the sheriff of a county, to the mayor or city manager of a city or to the selectmen of a town, the commander-in-chief may issue his order, or such sheriff, mayor, city manager or selectmen may issue a precept, directed to the commander of any organization or unit of the armed forces of the commonwealth, within the county of the sheriff, the city of the mayor or city manager, or the town of the selectmen issuing such order or precept, directing him to order his command, or any part thereof, to appear at a time and place therein specified to aid the civil authority in preserving order, affording such protection and supporting the laws; which precept shall be in substance as follows:—

COMMONWEALTH OF MASSACHUSETTS

To (insert the officer's title) A.B., commanding (insert his command).

Whereas, It appears to (the sheriff, mayor, city manager or the selectmen) of the (county, city or town) of   , that (here state one or more of the causes above mentioned) in our   of   , and that military force is necessary to aid the civil authority. Now, therefore, we command you that you cause (the command or such part thereof as may be desired), armed and equipped with ammunition and with proper officers, to appear at   , on   , then and there to obey such orders as may be given according to law. Hereof fail not at your peril, and have you there this precept with your doings returned thereon.

This precept shall be signed by the sheriff, mayor, city manager or selectmen, and may be varied to suit the circumstances of the case; and a copy of the same shall immediately be forwarded by the sheriff, mayor, city manager or selectmen to the commander-in-chief.

Added by St.1954, c. 590, § 1.

CHAPTER 38

MEDICAL EXAMINERS

Sec.
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1B. Office of medicolegal investigation; chief medical examiner; costs; qualifications; powers; programs; employees; removal.
1C. Cooperation with office of medicolegal investigations; testing; pathology laboratory.
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§ 1. Appointment; tenure; jurisdiction; vacancies

The governor shall appoint for terms of five years duly qualified persons learned in the science of medicine, to serve as medical examiners in counties hereinafter designated and as associate medical examiners for such districts as are hereinafter designated. Where available, medical examiners and associate medical examiners shall be appointed in counties where they reside or practice medicine. Appointment of medical examiners and associate medical examiners shall be for service in counties divided into districts as hereinafter indicated, except that said medical examiners and associate medical examiners may be authorized to function in other parts of the county and in other counties by the committee on medicolegal investigation as established pursuant to section one hundred and eight-four of chapter six. Appointments by the governor shall be made in numbers as follows:

Two examiners and two associate examiners in Suffolk county, one examiner and two associate examiners in Nantucket county, district one in Essex county and in district two in Barnstable county and one examiner and one associate examiner in each of the following districts shall be so appointed:

Barnstable county, district one, comprising Harwich, Dennis, Yarmouth, Brewster, Chatham, Orleans and Eastham; district two, Barnstable, Bourne, Sandwich, Mashpee and Falmouth; and district three, Provincetown, Truro and Wellfleet.

Berkshire county, district one, comprising North Adams, Williamstown, Clarksburg, Adams, Florida, Savoy, New Ashford and Cheshire; district two, Pittsfield, Lanesborough, Windsor, Dalton, Hinsdale, Peru and Hancock; district three, Richmond, Lenox, Washington, Becket, Lee, Stockbridge, Tyringham and Otis; and district four, West Stockbridge, Alford, Great Barrington, Monterey, Sandisfield, New Marlborough, Sheffield, Egremont and Mount Washington.

Bristol county, district one, comprising Attleboro, North Attleborough, Seekonk, Norton, Mansfield and Rehoboth; district two, Taunton, Raynham, Easton, Berkley and Dighton; district three, Fall River, Somerset, Swansea, Freetown and Westport; and district four, New Bedford, Dartmouth, Fairhaven and Acushnet.

Dukes county, district one, comprising Edgartown and Oak Bluffs; district two, Tisbury, West Tisbury and Gosnold; and district three, Chilmark and Gay Head.

Essex county, district two, Ipswich, Rowley, Hamilton and Essex; district three, Newburyport, Newbury, West Newbury, Amesbury and Salisbury; district four, Haverhill and Merrimac; district five, Lawrence, Methuen, Andover and North Andover; district six, Georgetown, Boxford, Topsfield and Groveland; district seven, Beverly, Wenham and Manchester; district eight, Peabody, Danvers, Middleton and Lynnfield; district nine, Lynn, Saugus, Nahant and Swampscott; and district ten, Salem and Marblehead.

Franklin county, the northern district, comprising Orange, Erving, Warwick, New Salem and Wendell; the eastern district, Bernardston, Gill, Greenfield, Leverett Montague, Northfield, Shutesbury and Sunderland; and the western district, Ashfield, Buckland, Charlemont, Colrain, Conway, Deerfield, Hawley, Heath, Leyden, Monroe, Rowe, Shelburne and Whately.

Hampden county, district one, comprising Brimfield, Holland, Palmer, Monson and Wales; district two, Springfield, Agawam, East Longmeadow, Longmeadow, West Springfield, Wilbraham and Hampden; district three, Holyoke; district four, Blandford, Chester, Granville, Montgomery, Russell, Southwick, Tolland and Westfield; and district five, Chicopee and Ludlow.

Hampshire county, district one, comprising Northampton, Chesterfield, Cummington, Goshen, Hatfield, Plainfield and Williamsburg; district two, Easthampton, Huntington, Middlefield, Southampton, Westhampton and Worthington; district three, Amherst, Granby, Hadley, Pelham and South Hadley; and district four, Belchertown and Ware.

Middlesex county, district one, comprising Cambridge, Belmont and Arlington; district two, Malden, Somerville, Everett and Medford; district three, Melrose, Stoneham, Wakefield, Wilmington, Reading and North Reading; district four, Woburn, Winchester, Lexington and Burlington; district five, Lowell, Dracut, Tewksbury, Billerica, Chelmsford and Tyngsborough; district six, Concord, Carlisle, Bedford, Lincoln, Littleton, Acton and Boxborough; district seven, Newton, Waltham, Watertown and Weston; district eight, Framingham, Wayland, Natick, Sherborn, Holliston, Hopkinton and Ashland; district nine, Marlborough, Hudson, Maynard, Stow and Sudbury; district ten, Ayer, Groton, Westford, Dunstable, Pepperell, Shirley, Townsend and Ashby.

Norfolk county, district one, comprising Dedham, Needham, Wellesley, Westwood, Norwood and Dover; district two, Cohasset; district three, Quincy, Milton and Randolph; district four, Weymouth, Braintree and Holbrook; district five, Avon, Stoughton, Canton, Walpole and Sharon; district six, Franklin, Foxborough, Plainville and Wrentham; district seven, Medway, Medfield, Millis, Norfolk and Bellingham; and district eight, Brookline.

Plymouth county, district one, comprising Brockton, West Bridgewater, East Bridgewater, Bridgewater and Whitman; district two, Abington, Rockland, Hanover, Hanson, Norwell and Pembroke; district three, Plymouth, Halifax, Kingston, Plympton and Duxbury; district four, Middleborough, Wareham, Mattapoisett, Carver, Rochester, Lakeville and Marion; and district five, Hingham, Hull, Scituate and Marshfield.

Worcester county, district one, comprising Athol, Petersham, Phillipston and Royalston; district two, Gardner, Templeton and Winchendon; district three, Fitchburg Ashburnham, Leominster, Lunenburg, Princeton and Westminster; district four, Berlin, Bolton, Boylston, Clinton, Harvard, Lancaster and Sterling; district five, Grafton, Northborough, Southborough and Westborough; district six, Hopedale, Mendon, Milford and Upton; district seven, Blackstone, Douglas, Millville, Northbridge and Uxbridge; district eight, Charlton, Dudley, Oxford, Southbridge, Sturbridge and Webster; district nine, Brookfield, East Brookfield, North Brookfield, Spencer, Warren and West Brookfield; district ten, Barre, Hubbardston, Hardwick, New Braintree, Oakham and Rutland; and district eleven, Worcester, Auburn, Holden, Leicester, Millbury, Paxton, Shrewsbury, Sutton and West Boylston.

Any vacancy in the office of medical examiner or associate medical examiner, occurring prior to the expiration of the term of such officer, shall be filled by appointment by the governor, with the advice and consent of the council, for a full term of five years.

Amended by St.1939, c. 260; St.1939, c. 451, § 6; St.1947, c. 69, § 1; St.1952, c. 44; St.1966, c. 278, § 1; St.1970, c. 492; St.1973, c. 859, §§ 1, 2; St.1977, c. 941, §§ 2, 3.

§ 1A. Forensic dental examiner; appointment

The governor shall appoint for a term of seven years a person skilled in forensic dentistry as the forensic dental examiner who shall assist any medical examiner or associate examiner when requested to do so. For the purpose of this section a "forensic dental examiner" shall be a dentist capable of assisting a medical examiner or associate medical examiner in a medico-legal investigation.

Added by St 1975, c. 829.

§ 1B. Office of medicolegal investigation; chief medical examiner; costs; qualifications; powers; programs; employees; removal

There shall be an office of medicolegal investigation under the supervision and control of the chief medical examiner within the executive office of administration and finance. All salaries and expenses of the office, as a state agency, shall be paid by the commonwealth. All fees and expenses of the medical examiners and associate medical examiners shall be paid by the counties in which their services are performed.

The chief medical examiner shall be a physician who is a diplomate of the American Board of Pathology in Forensic Pathology and registered or qualified as eligible to practice medicine in the commonwealth. The chief medical examiner shall be appointed by the governor for a term of seven years from among a list of not less than three nominees recommended by the committee. The governor shall have the right to request an additional list of three nominees before making the appointment. The chief medical examiner shall devote his full time during ordinary business hours to the duties and functions described in this section and shall not engage in outside employment or professional activities during said hours. He shall receive a salary of thirty-seven thousand five hundred dollars a year and shall be paid by the commonwealth.

The duties and functions of the chief medical examiner shall include the supervision of the medical examiners and associate medical examiners of the commonwealth and the enforcement of the rules and regulations adopted by the committee; review of the work of the medical examiners and associate medical examiners and the giving of advice and counsel upon request or when necessary; the reception of copies of the medical investigation and autopsy on every case accepted by the medical examiners and associate medical examiners and the keeping of the records and the compilation of annual statistics; the making of recommendations to the governor, after consultation with the appropriate district medical societies, for the appointment and reappointment of medical examiners and associate medical examiners when a termination of appointment occurs or a vacancy exists, and the appointment of all personnel in the office of the chief medical examiner; provided, however, that all professional appointments shall not be subject to the provisions of section nine A of chapter thirty or chapter thirty-one.

The office of medicolegal investigations shall, in conjunction with a medical school in the commonwealth, conduct appropriate educational, research and training programs, including such programs for forensic pathologists, other physicians, forensic scientists, law enforcement personnel and others which are considered of benefit to medicolegal investigation in general, and within the commonwealth in particular. For such purposes the chief medical examiner may maintain a faculty affiliation with said medical school, provided that any such program conducted in conjunction with said medical school is specifically within the scope of the subject matter of this act and provided, further, that no additional compensation be paid for the conduct of such program.

The chief medical examiner may appoint such associate chief medical examiners as he deems necessary for the statewide operation of the program in order to assist the chief medical examiner, to act for him in his absence or incapacity or to supervise the activities of medical examiners in a specific region. The associate chief medical examiners shall be certified in forensic pathology or have a minimum of five years experience as a medical examiner and shall be registered to practice medicine in the commonwealth. Such associate chief medical examiners may be appointed from among the personnel of the office of medicolegal investigations or may be appointed from among the medical examiners serving in districts located in other parts of the state. The chief medical examiner may establish regional branches of the office of medicolegal investigations. Such regional branches may be supervised by an associate chief medical examiner.

For the purpose of performing medicolegal autopsies as a part of a public medicolegal investigation the chief medical examiner shall establish a panel of pathologists who shall be available to perform such autopsies. Such medicolegal autopsies may be performed by order of the chief medical examiner or by order of a medical examiner or associate medical examiner, or by order of the attorney general or the district attorney of the district in which a body is found, in an appropriate case in accordance with section six. The chief medical examiner shall select and designate said panel of pathologists which shall be composed of physicians who are certified in anatomic pathology by the American Board of Pathology who shall be designated as associate state pathologists, and pathologists so certified who, in addition thereto, are also certified in forensic pathology by the American Board of Pathology who shall be designated as state pathologists. A state pathologist or associate state pathologist shall be compensated for each autopsy he conducts by the county treasurer of the county in which the body is found as follows: three hundred dollars to state pathologist and two hundred dollars to associate state pathologists, plus travel expenses at the rate of fifteen cents per mile. The work of the pathologists shall be supervised by the chief medical examiner and a report on all cases shall be made to the chief medical examiner.

Any medical examiner or associate medical examiner may be removed by the governor upon recommendation of the committee on the basis of incapacity, incompetence or other serious cause. Prior to any such recommendation the chief medical examiner shall notify such medical examiner or associate medical examiner of such intention to remove him and shall specify the cause. Such examiner shall have thirty days in which to request a hearing before the committee on his removal from office and such hearing shall be held in public if he so requests. If the committee finds on the basis of such hearing that serious cause exists for removal, or no hearing is requested, the committee may, not less than thirty days after such examiner has received notice of the intention to remove him, recommend to the governor that the medical examiner should be removed. Otherwise the committee shall make no such recommendation.

Added by St.1977, c. 941, § 4.

§ 1C. Cooperation with office of medicolegal investigations; testing; pathology laboratory

All law enforcement officers, medical examiners and associate medical examiners and other state officials shall cooperate with the office of medicolegal investigations in the investigation of medicolegal cases. The chief medical examiner, the medical examiners and associate medical examiners shall employ the services of the department of public safety laboratory for the performance of tests, documentation of evidence, investigational procedures and consultation on special problems.

The chief medical examiner, subject to appropriation, may establish and operate a pathology laboratory within the office of medicolegal investigations to meet the needs of that office. If other services required by the office of medicolegal investigation are not available in the department of public safety laboratory, the chief medical examiner may employ the services of other appropriate laboratories.

Added by St.1977, c. 941, § 4.

§ 2. Associate examiners; powers and duties; duties in adjoining districts

The associate medical examiners for Suffolk county shall, at the request of either of its medical examiners, perform the duties and have the powers of medical examiners. Each medical examiner shall in each year be entitled to two months' service in the aggregate from the associates. Associate medical examiners in the other districts shall, in the absence of the medical examiners or in case of their inability to act, perform in their respective counties all of the duties of the medical examiner.

The associate medical examiner may assist the medical examiner in investigations or may conduct investigations for the medical examiner when the caseload makes this assistance desirable or for such other reasons as are deemed appropriate by the medical examiner. The committee may authorize a medical examiner or an associate medical examiner to serve on a temporary basis in another district of the same or another county for holidays, weekends, or other periods in the absence or inability to act of the medical examiner or associate medical examiner for that district, or to serve as the medical examiner or as the associate medical examiner for another county or district where a vacancy exists in the position of medical examiner or associate medical examiner. The committee may authorize an associate medical examiner from another district or county who is willing to serve as the medical examiner for a particular district or county if the positions of medical examiner and associate medical examiner for such county or district are vacant. Such temporary designation shall terminate upon an appointment to such position by the governor. The period of such a temporary assignment shall not exceed the remainder of the term to which such person was appointed by the governor as a medical examiner or associate medical examiner. Compensation for such temporary service shall be provided by the county in which the functions as medical examiner or associate medical examiner are performed.

Amended by St.1945, c. 632, § 1; St.1977, c. 941, § 5.

§ 2A. Repealed. St.1945, c. 632, § 2

§ 3. Oath and bond

Each examiner and associate examiner, before entering upon the performance of his official duties, shall be sworn and give bond, in the sum of five thousand dollars, to the county, conditioned to perform faithfully his official duties, with a surety company authorized to transact business in the commonwealth, as surety. Failure for three months after appointment to give such bond shall render his appointment void.

Amended by St.1939, c. 214, § 4.

§ 4. Breach of condition of bond; penalty

Upon breach of the condition of such bond to the injury of any person, the principal may be removed from office and action brought thereon in like manner as upon the bond of a sheriff.

§ 5. Salaries; payment of expenses; fees

In Suffolk county each medical examiner shall receive from the county a salary of twenty thousand dollars and each associate medical examiner a salary of ten thousand five hundred dollars; but if either associate serves more than four months in any year, he shall for such additional service be paid at the same rate as the medical examiner, and the amount so paid shall be deducted from the salary of the medical examiner at whose request he so serves. The medical examiners for said county shall be provided with rooms suitably furnished for the performance of their duties, the rent, maintenance, furnishing and office equipment of which shall be paid for by said county upon approval of the mayor of the city of Boston. Each of said medical examiners may, in the name of said county, contract such bills for clerical service, postage, stationery, printing, telephone, traveling, and for such other incidental expenses as may in his opinion be necessary for the proper performance of his duty, to an amount not exceeding twenty thousand dollars in any one year; and each associate may so contract bills for the said purposes to an amount not exceeding two thousand four hundred and sixty-five dollars in any one year; and all such bills shall be paid by said county, upon a certificate by the contracting examiner that they were necessarily incurred in the performance of his duty, and upon the approval of the auditor of the city of Boston, as provided in section nineteen, and of the mayor of said city. Medical examiners and associate medical examiners in other counties shall receive fees as follows: For a view without an autopsy, fifty dollars; for a view with an autopsy, one hundred dollars; and for travel fifteen cents a mile for each mile traveled in the investigation of a death; for attendance as a witness at inquests or as a witness in criminal cases in district courts and in the superior court, one hundred dollars for each day of such attendance; and for travel, fifteen cents a mile to and from the place where such inquest or court trial is held.

Amended by St.1945, c. 632, § 3; St.1947, c. 579; St.1949, c. 510; St.1955, c. 422; St.1959, c. 301, § 1; St.1967, c. 670, § 1; St.1970, c. 783, §§ 1, 2; St.1977, c. 941, §§ 6, 7.

§ 6. Duty to report deaths; penalty for failure to report; duties of examiner and office of medicolegal investigation; provisions for autopsies; witness fees

When any person in the commonwealth is supposed to have died by violence or by the action of chemical, thermal or electrical agents or following abortion, or from diseases resulting from injury or infection relating to occupation, or suddenly when not disabled by recognizable disease, or from malnutrition, or from sexual abuse, or a child who is determined to be physically dependent upon an addictive drug at birth, or when any person is found dead, it shall be the duty of any person having knowledge of such death immediately to notify the medical examiner of the district of the county wherein the body lies of the known facts concerning the time, place, manner, circumstances, and cause of such death. A physician who, having knowledge of such a death, fails to notify the medical examiner shall be punished by a fine of not more than one hundred dollars. Immediately upon receipt of such notification, the medical examiner shall carefully inquire into the cause and circumstances of the death and if, as a result of such inquiry, he is of the opinion that death may have resulted from violence or unnatural causes, he shall go to the dead body and take charge of the same. Upon taking charge of the dead body and before moving the same the medical examiner shall carefully note the appearance, the condition and position of the body and record every fact and circumstance tending to show the cause and manner of death with the names and addresses of all known witnesses and subscribe the same and make such record a part of his report as provided in section seven. If on view of the dead body and after personal inquiry into the cause and manner of death, the medical examiner considers a further examination necessary in the public interest, he shall immediately notify the district attorney of the district and county within whose jurisdiction the body lies of his intention to make such further examination. The body shall not be moved, and the scene where the body is located shall not be disturbed until the district attorney or his representative either arrives at the scene or gives directions as to what shall be done at the scene and for the removal of the body. The district attorney and his law enforcement representative, upon receipt of notification of the death, shall thereafter be the authority to direct and control the criminal investigation of the death and shall coordinate the criminal investigation with the police within whose jurisdiction the death occurred. The police shall forthwith notify the district attorney or his law enforcement representative of such death. The medical examiner, on his own authority may, and if he is so requested by the district attorney or the attorney general, shall make or cause to be made in his presence an autopsy of the aforesaid body. Such an autopsy shall be performed in the presence of two or more discreet persons whose attendance the medical examiner may compel by subpoena. If a medical examiner considers it necessary to have a physician present as a witness at an autopsy, such physician shall receive a fee of fifteen dollars. Other witnesses, except officers named in section fifty of chapter two hundred and sixty-two, shall be allowed ten dollars each. A clerk may be employed to record the results of such a view or autopsy and shall receive not more than five dollars per day therefor. Upon written order of the district attorney of the district where the body lies, or of the attorney general, a medical examiner shall also make, or cause to be made in his presence, an autopsy under like conditions of any dead body within his county. The medical examiner may on his own authority, and shall if so requested by the district attorney of the county where the body lies, employ the services of a pathologist, a chemist or other expert to aid in the examination of the body or of substances supposed to have caused or contributed to death, and if the aforesaid pathologist, chemist or other expert is not already employed by the commonwealth or by the city or county where the body lies for the discharge of such services he shall, upon written authorization of the medical examiner and of the district attorney, if such employment and services were requested by him, be allowed reasonable compensation, payable by the county in the manner provided in section nineteen. The medical examiner shall, at the time of the autopsy, record or cause to be recorded each fact and circumstance tending to show the condition of the body and the cause and manner of death, with the names and addresses of said witnesses, which record he shall subscribe. The medical examiner may allow reasonable compensation, payable by the county in the manner provided in section nineteen, for the transportation of such bodies as need to be moved to a place where they can be more satisfactorily examined, and for the use of such quarters as may be needed for the performance of an autopsy.

The medical examiner may perform such autopsy himself or may request a member of the panel of pathologists established under section one B to perform such autopsy. The medical examiner may also consult the office of medicolegal investigations regarding his decision to conduct a further investigation. He may make a request to the chief medical examiner for a medicolegal autopsy to be conducted as determined by the chief medical examiner.

Amended by St.1939, c. 475; St.1945, c. 632, § 4; St.1973, c. 1076, § 1; St.1977, c. 941, §§ 8, 9; St.1978, c. 237; St.1979, c. 391.

§ 6A. Duty to submit blood samples in cases of death resulting from motor vehicle accidents; statement; liability

If, after making inquiry pursuant to section six, the medical examiner is of the opinion that death may have resulted from injuries sustained in a motor vehicle accident, and the death occurred within four hours of the accident, and the deceased was the operator of a motor vehicle or a pedestrian sixteen years of age or older, the medical examiner shall submit to the state police laboratory a sample of blood from the deceased in an amount sufficient for chemical analysis. The medical examiner shall submit a statement with such sample including, but not limited to, information as to whether the body was that of an operator or pedestrian, and the name, age and sex of the deceased if available. The medical examiner, acting in compliance with this section, shall not be civilly or criminally liable for such actions.

Added by St.1972, c. 180.

§ 6B. [Reserved]

§ 6C. Repealed by St.1977, c. 941, § 10

§ 7. Reports of circumstances surrounding deaths and autopsies

He shall forthwith file with the district attorney for his district a report of each autopsy and view and of his personal inquiries, with a certificate that, in his judgment, the manner and cause of death could not be ascertained by view and inquiry and that an autopsy was necessary. If the autopsy was requested or ordered by the district attorney as provided in section six, he shall so certify to the commissioners of the county where the same was held or, in Suffolk county, to the auditor of Boston. If upon such view, personal inquiry or autopsy, the medical examiner is of opinion that the death may have been caused by the act or negligence of another, he shall at once notify the district attorney and a justice of a district court within whose jurisdiction the body was found, if the place where found and the place of the said act or negligence are within the same county, or if the latter place is unknown; otherwise, the district attorney and such a justice within whose district or jurisdiction the said act or negligence occurred. He shall also file with the district attorney thus notified, and with the justice or in his court, an attested copy of the view and his personal inquiries and a copy of the record of the autopsy made as provided in section six. He shall in all cases forthwith certify to the town clerk or registrar in the place where the deceased died, and to the department of industrial accidents in cases where death, in his opinion, was caused by or related to the occupation of the deceased, and to the registrar of motor vehicles in cases where death, in his opinion, was caused by or related to the operation of a motor vehicle, his name and residence, if known; otherwise a description as full as may be, with the cause and manner of death.

In a capital case, after indictment and arraignment, and while the defendant is in custody or subject to the jurisdiction of the court, upon his request, a copy of the report of the view and inquiries and of the record of the autopsy shall be made available to him by the district attorney.

Amended by St.1941, c. 366; St.1945, c. 632, § 5; St.1950, c. 143; St.1953, c. 319, § 6; St.1964, c. 662.

§ 8. Inquest; notice of hearing; persons authorized to attend; exclusion of disinterested persons; examination of witnesses

The court or justice may thereupon hold an inquest. The attorney general or the district attorney may, notwithstanding the fact that no action has been taken by the medical examiner under section six, or that no notification that the death may have been caused by the act or negligence of another has been given to the court or justice under section seven, require an inquest to be held in case of any death supposed to have been caused by external means. The court or justice shall give seasonable notice of the time and place of the inquest to the department of public utilities in any case of death by accident upon a railroad, electric railroad, street railway, or railroad for private use, and in any case of death in which a motor vehicle of a common carrier of passengers for hire by motor vehicle is involved, and to the department of public works in any case of death in which any motor vehicle is involved. Any person or his attorney having an interest in the inquest may be present during the holding of such inquest and shall at the completion of the magistrate's report of said inquest have the right to examine said report. All other persons not required by law to attend may be excluded from the inquest; provided, however, that the parents, guardian or next of kin of the person whose death is the subject of the inquest shall be deemed to be an interested person. The district attorney or any person designated by him may attend the inquest and examine the witnesses, who may be kept separate so that they cannot converse with each other until they have been examined.

Amended by St.1932, c. 118, § 1; St.1939, c. 30, § 1; St.1975, c. 490, § 1.

§ 9. Jurisdiction

If it appears that the place where the supposed act or negligence occurred and the place where the body was found are both without the limits of the judicial district of the court notified by the medical examiner under section seven, the court shall nevertheless proceed with the inquest and have continuous and exclusive jurisdiction thereof if either place is within the commonwealth and within fifty rods of the boundary line of such district, unless a prior and like notice shall have been issued by a medical examiner in another county in accordance with said section.

Amended by St.1953, c. 319, § 7.

§ 10. Investigation

A district court about to hold an inquest may appoint an officer qualified to serve criminal process to investigate the case and to summon the witnesses, and may allow him additional compensation therefor, payable in like manner as the fees of officers in criminal cases.

§ 11. Deaths involving carriers; reports

If a magistrate believes that an inquest to be held by him relates to the accidental death of a passenger or employee upon a railroad or electric railroad or a traveler upon a public or private way at a railroad crossing, or to an accidental death connected with the operation of a street railway or of a railroad for private use, or a motor vehicle for the carriage of passengers for hire under chapter one hundred and fifty-nine A, he shall cause a verbatim report of the evidence to be made and sworn to by the person making it; and the report and the bill for services, after examination and written approval by the magistrate, shall be forwarded to the department of public utilities within thirty days after the date of the inquest, and, when made, a copy of the magistrate's report on the inquest. The bill, when approved by said department, shall be forwarded to the comptroller and paid by the commonwealth, assessed on the person owning or operating such railroad or railway, or motor vehicle, and shall be collected in the same manner as taxes upon corporations. The magistrate may in his discretion refuse fees to witnesses in the employ of the person upon whose railroad or railway, or the person licensed under said chapter one hundred and fifty-nine A for the operation of the motor vehicle in connection with the operation of which, the accident occurred.

Amended by St.1941, c. 499.

§ 12. Report of findings at inquest

The magistrate shall report in writing when, where and by what means the person met his death, his name, if known, and all material circumstances attending his death, and the name, if known, of any person whose unlawful act or negligence appears to have contributed thereto. He shall file his report in the superior court for the county where the inquest is held.

§ 13. Persons charged with crimes; authority to arrest; binding over of witnesses

If a person charged by the report with the commission of a crime is at large, the magistrate shall forthwith issue process for his arrest, returnable before any court or magistrate having jurisdiction. If he finds that murder, manslaughter or an assault has been committed, he may bind over, for appearance in said court, as in criminal cases, such witnesses as he considers necessary, or as the district attorney may designate.

§ 14. Embalming fluid; restriction on use

No embalming fluid, or any substitute therefor, shall be injected into the body of any person supposed to have met his death by violence, until a permit, signed by the medical examiner, has first been obtained.

§ 15. Delivery of body for burial; prompt recording of death

After an autopsy or a view or examination without an autopsy, the medical examiner shall deliver the body, upon application, to the husband or wife, to the next of kin, or to any friend of the deceased, who shall have priority in the order named. If the body is unidentified or unclaimed for forty-eight hours after the view thereof, the medical examiner shall deliver it to the department of public welfare, which shall bury it in accordance with section eighteen of chapter one hundred and seventeen.

Upon delivery of the body to the department of public welfare, the medical examiner shall transmit a copy of the death certificate to the city or town clerk of the town where the body was found. Said clerk shall promptly record said copy, notwithstanding that the place of burial and other pertinent data as required by section one of chapter forty-six is unknown. Upon burial of the body, the board of health shall transmit such certificate and data, as is required by section eleven of chapter forty-six, to said clerk who shall amend the initial recording and advise the secretary of the commonwealth accordingly.

Amended by St.1974, c. 163.

§ 16. Bodies intended for cremation; examination

Medical examiners and associate examiners within their respective districts shall, on application and payment or tender of thirty dollars, view the body and make personal inquiry concerning the death of any person whose body is intended for cremation, and shall authorize such cremation only when of opinion that no further examination or judicial inquiry concerning such death is necessary.

Amended by St.1959, c. 301, § 2; St.1967, c. 670, § 2; St.1977, c. 941, § 11.

§ 17. Bodies found in water; fees for landing

The medical examiner may allow reasonable compensation, payable by the county in the manner provided in section nineteen, for services rendered in bringing to land a human body found in any of the harbors, rivers or waters of the commonwealth, but this provision shall not entitle any person to compensation for services rendered in searching for a dead body.

§ 18. Personal property of deceased; disposition; penalty for noncompliance

The medical examiner shall take charge of any money or other personal property of the deceased found on or near the body, and shall, unless such money or property is required as evidence, deliver it to the person entitled to its custody or possession, or, if not claimed within sixty days, to a public administrator. For fraudulent neglect or refusal so to deliver such property within ten days after demand, a medical examiner or an associate medical examiner shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years.

Amended by St.1953, c. 320; St.1955, c. 162.

§ 19. Fees and expenses; accounting; certification; payment

Every medical examiner shall return an account of the expenses of each view or autopsy, including his fees, to the commissioners of the county where held, or in Suffolk county to the auditor of Boston. The commissioners or auditor shall audit the same, and certify to the county treasurer what items therein are just and reasonable, and he shall pay the same to the person entitled thereto. No auditing officer shall certify any fee for an autopsy which was ordered or requested by the district attorney of the district where the body was found until he has received from the district attorney the certificate required by section seven.

Amended by St.1945, c. 632, § 6.

§ 20. Autopsies performed on children dying under two years of age; notice required; reimbursement of costs

The parent or legal guardian or any police officer or physician knowing of the sudden unexpected death of any child under the age of two years shall immediately notify the medical examiner of the district of the county wherein the body lies of such death. The medical examiner shall notify the parent or legal guardian of such child that, if the parent or legal guardian consents, an autopsy shall be performed on the child by a pathologist from the panel established in section one B, the costs of which shall be borne by the commonwealth. Any parent or legal guardian consenting to such an autopsy shall be notified of the results of said autopsy as to the cause of death. Every pathologist performing an autopsy under this section shall return an account of the expenses of same, including his fees, to the state treasurer who, after certification of the account by the state auditor, shall reimburse said medical examiner.

Added by St.1977, c. 941, § 12.

§§ 21, 22. Repealed. St.1962, c. 413

TITLE VII

CITIES, TOWNS AND DISTRICTS

CHAPTER 39

MUNICIPAL GOVERNMENT

TOWN MEETINGS

Sec.
23B. Open meetings of governmental bodies; executive sessions; exceptions; notice; records; failure to comply; orders.
23C. Regulation of participation by public in open meetings.

TOWN MEETINGS

§ 23B. Open meetings of governmental bodies; executive sessions; exceptions; notice; records; failure to comply; orders

All meetings of a governmental body shall be open to the public and any person shall be permitted to attend any meeting except as otherwise provided by this section.

No quorum of a governmental body shall meet in private for the purpose of deciding on or deliberating toward a decision on any matter except as provided by this section.

No executive session shall be held until the governmental body has first convened in an open session for which notice has been given, a majority of the members have voted to go into executive session and the vote of each member is recorded on a roll call vote and entered into the minutes, the presiding officer has cited the purpose for an executive session, and the presiding officer has stated before the executive session if the governmental body will reconvene after the executive session.

Nothing except the limitation contained in this section shall be construed to prevent the governmental body from holding an executive session after an open meeting has been convened and a recorded vote has been taken to hold an executive session. Executive sessions may be held only for the following purposes:

(1) To discuss the reputation, character, physical condition or mental health rather than the professional competence of an individual, provided that the individual involved in such executive session has been notified in writing by the governmental body, at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body

shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(*a*) to be present at such executive session during discussions or considerations which involve that individual.

(*b*) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation in said executive session.

(*c*) to speak in his own behalf.

(2) To consider the discipline or dismissal of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual, provided that the individual involved in such executive session pursuant to this clause has been notified in writing by the governmental body at least forty-eight hours prior to the proposed executive session. Notification may be waived upon agreement of the parties. A governmental body shall hold an open meeting if the individual involved requests that the meeting be open. If an executive session is held, such individual shall have the following rights:

(*a*) to be present at such executive session during discussions or considerations which involve that individual.

(*b*) to have counsel or a representative of his own choosing present and attending for the purpose of advising said individual and not for the purpose of active participation.

(*c*) to speak in his own behalf.

(3) To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the governmental body, and to conduct collective bargaining sessions.

(4) To discuss the deployment of security personnel or devices.

(5) To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

(6) To consider the purchase, exchange, lease or value of real property, if such discussions may have a detrimental effect on the negotiating position of the governmental body and a person, firm or corporation.

(7) To comply with the provisions of any general or special law or federal grant-in-aid requirements.

This section shall not apply to any chance meeting, or a social meeting at which matters relating to official business are discussed so long as no final agreement is reached. No chance meeting or social meeting shall be used in circumvention of the spirit or requirements of this section to discuss or act upon a matter over which the governmental body has supervision, control, jurisdiction or advisory power.

Except in an emergency, a notice of every meeting of any governmental body shall be filed with the clerk of the city or town in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours, including Saturdays but not Sundays and legal holidays, prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city or town. The secretary of a regional school district committee shall be considered to be its clerk and he shall file the notice of meetings of the committee with the clerk of each city or town within such district and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town and such secretary shall post such notice in his office or on the principal official bulletin board of the district. If the meeting shall be of a regional or district governmental body, the officer calling the meeting shall file the notice thereof with the clerk of each city and town within such region or district, and each such clerk shall post the notice in his office or on the principal official bulletin board of the city or town. The notice shall include the date, time, and place of such meeting. Such filing and posting shall be the responsibility of the officer calling such meeting.

A governmental body shall maintain accurate records of its meetings, setting forth the date, time, place, members present or absent and action taken at each meeting, including executive sessions. The records of each meeting shall become a public record and be available to the public; provided, however, that the records of any executive session may remain secret as long as publication may defeat the lawful purposes of the executive session, but no longer. All votes taken in executive sessions shall be recorded roll call votes and shall become a part of the record of said executive sessions.

A meeting of a governmental body may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction except when a meeting is held in executive session; provided, that in such recording there is no active interference with the conduct of the meeting.

Upon qualification for office following an appointment or election to a governmental body, as defined in this section, the member shall be furnished by the city or town clerk with a copy of this section. Each such member shall sign a written acknowledgement that he has been provided with such a copy.

The district attorney of the county in which the violation occurred shall enforce the provisions of this section.

Upon proof of failure by any governmental body or by any member or officer thereof to carry out any of the provisions for public notice or meetings, for holding open meetings, or for maintaining public records thereof, any justice of the supreme judicial court or the superior court sitting within and for the county in which such governmental body acts shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out such provisions at future meetings. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney of the county in which the city or town is located. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of such complaints the burden shall be on the respondent to show by a preponderance of the evidence that the action complained of in such complaint was in accordance with and authorized by section eleven A½ of chapter thirty A, by section nine G of chapter thirty-four or by this section. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Such order may invalidate any action taken at any meeting at which any provision of this section has been violated, provided that such complaint is filed within twenty-one days of the date when such action is made public.

Any such order may also, when appropriate, require the records of any such meeting to be made public, unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

The rights of an individual set forth in this section relative to his appearance before a meeting in an executive or open session, are in addition to the rights that an individual may have from any other source, including, but not limited to, rights under any laws or collective bargaining agreements, and the exercise or nonexercise of the individual rights under this section shall not be construed as a waiver of any rights of the individual.

Added by St.1975, c. 303, § 3. Amended by St.1976, c. 397, § 6; St.1977, c. 527; St.1977, c. 829, § 3; St.1978, c. 372, §§ 10 to 12.

§ 23C. Regulation of participation by public in open meetings

No person shall address a public meeting of a governmental body without permission of the presiding officer at such meeting, and all persons shall, at the request of such presiding officer, be silent. If, after warning from the presiding officer, a person persists in disorderly behavior, said officer may order him to withdraw from the meeting, and, if he does not withdraw, may order a constable or any other person to remove him and confine him in some convenient place until the meeting is adjourned.

Added by St.1975, c. 303, § 3.

CHAPTER 40

POWERS AND DUTIES OF CITIES AND TOWNS

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§ 1. Nature and scope

Cities and towns shall be bodies corporate, and, except as otherwise expressly provided, shall have the powers, exercise the privileges and be subject to the duties and liabilities provided in the several acts establishing them and in the acts relating thereto. Except as otherwise expressly provided, cities shall have all the powers of towns and such additional powers as are granted to them by their charters or by general or special law, and all laws relative to towns shall apply to cities.

§ 1A. District defined

Except as otherwise expressly provided, the word "district" as used in this chapter shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

Added by St.1967, c. 44, § 1. Amended by St.1969, c. 505, § 3.

§ 1B. Districts; power to sue and be sued; insurance; defense of civil actions

A district may sue and be sued by its name to the same extent and upon the same conditions as a city or town.

Districts shall have the power and authority to assess member cities and towns for the purpose of paying a proper charge to effect insurance for payment of damages or for the purpose of paying a proper charge for payment of damages incurred pursuant to chapter two hundred and fifty-eight, and shall have the power and authority to defend civil actions brought against them pursuant to said chapter.

Added by St.1978, c. 512, § 7.

§ 2. Towns; power to sue and be sued

A town may in its corporate capacity sue and be sued by its name, and may appoint necessary agents therefor.

§ 3. Towns; power to hold, lease and convey property

A town may hold real estate for the public use of the inhabitants and may convey the same by a deed of its selectmen thereto duly authorized, or by a deed of a committee or agent thereto duly authorized; may by its selectmen let or lease for not more than ten years, on such terms as the selectmen determine, a public building or part thereof, except school houses in actual use as such; may hold personal estate for the public use of the inhabitants, and alienate and dispose of the same; may hold real and personal estate in trust for the support of schools, and for the promotion of education, within the limits of the town; may receive, hold and manage any devise, bequest or gift for the establishment or equipment of memorials for property commemorating the services of the soldiers, sailors and marines who have served the country in war, and for the establishment or maintenance of any reading room for which it may grant money under the provisions of section five; and may make such orders as it may deem necessary or expedient for the disposal or use of its corporate property. All real estate or personal property of the town, not by law or by vote of the town placed in the charge of any particular board, officer or department, shall be under the control of the selectmen, except as is otherwise provided in section nine.

Amended by St.1976, c. 191.

§ 3A. Cities, towns and districts; binding effect thereon of recordable instruments of title affecting interests in real estate as to good faith purchasers notwithstanding inconsistency of law therewith

Any recordable instrument purporting to affect an interest in real estate, title to which is held by a city, town, district or regional school district, executed in the name of a town by its selectmen, in the name of a city by its mayor or by its city manager in the case of a city having a Plan D or Plan E charter, or in the name of a district or regional school district by the chairman of its prudential committee or other governing board or by any agent or committee authorized by particular vote of the city, town or district or in the case of a municipality acting by or through an industrial development financing authority as provided in section seven of chapter forty D by vote of the board of directors of said authority, shall be binding on the city, town, district or regional school district in favor of a purchaser or other person relying in good faith on such instrument notwithstanding inconsistent provisions of general or special law, the city or town charter, by-laws, resolutions or votes.

Added by St.1973, c. 160.

§ 4. Towns; power to contract; purposes

A town may make contracts for the exercise of its corporate powers including the following purposes: For the disposal of its garbage, refuse and offal for a period not exceeding five years; provided, however, that a contract for the disposal of garbage, refuse, and offal by incineration, by composting, in a sanitary land fill, or in any other sanitary manner approved by the department of environmental quality engineering, may be for a period not exceeding twenty years, provided that such contract has been authorized by majority vote as defined in section one of chapter forty-four, and the terms thereof have been approved as reasonable by the emergency finance board. Notwithstanding any contrary provision of any law or the provisions of any charter, cities and towns shall not be exempt from liability on such contracts. Except as herein provided contracts for such disposal may be made by the selectmen, board of health or other officers having charge thereof.

For the construction of sewers, sewerage systems, and sewage treatment and disposal facilities, for making connections, thereto, and for the collection, treatment, and disposal of sewage, with one or more other governmental units as defined in section four A, for a period not exceeding thirty years, provided that such contract has been authorized by majority vote as defined in section one of chapter forty-four, and the terms thereof have been approved by the emergency finance board.

For the establishment or construction of such water supply, treatment and distribution facilities as cities, towns and districts are authorized to incur debt under the provisions of section eight of chapter forty-four, and for the maintenance and operation of such water supply, treatment and distribution facilities, with one or more other governmental units as defined in section four A. Such contracts may be for terms not exceeding twenty years, provided that the contract has been approved by majority vote as defined in section one of chapter forty-four, and the terms thereof have been approved by the emergency finance board.

For a supply of water to one or more governmental units as defined in section four A. Such contracts may be for terms not exceeding twenty years, provided that the contract has been approved by majority vote as defined in section one of chapter forty-four, and the terms thereof have been approved by the emergency finance board.

For the reception, care and treatment by hospitals established in or near the town, if it maintains and manages no hospital, of persons who by misfortune or poverty require relief during temporary illness; but this provision shall not add to the compensation now required from the commonwealth or from any town for the care and treatment of any person chargeable to them respectively, nor diminish the right of the commonwealth to require the removal to the Tewksbury hospital of a person who has no place of residence within the commonwealth. Contracts for such reception, care and treatment may be made by the board of health.

For health services. Contracts for health services may be made by the board of health or any legally constituted board performing the powers and duties of a board of health.

For the furnishing of transportation of school children. Contracts for such transportation may be made by the school committee for periods not exceeding five years; provided, that no such contract, whether written or oral, shall be made for the use for such transportation of a school bus, as defined in section one of chapter ninety, other than a motor vehicle for the operation of which security is required to be furnished under section six of chapter one hundred and fifty-nine A, unless there shall first have been filed with the registrar of motor vehicles and by copy with the city or town clerk the certificate of an insurance company or surety company authorized to issue or to execute as surety within the commonwealth motor vehicle liability policies or bonds, both as defined in section thirty-four A of chapter ninety, except as to amount, that there is in force such a policy or bond issued or executed as aforesaid, covering such school bus, which provides indemnity, protection or security to the amount or limit of at least fifteen thousand dollars on account of injury to or death of any one person, and subject to such limits as respects injury to or death of one person, of at least two hundred thousand dollars on account of any one accident resulting in injury or death of more than one person; and provided, further, that the termination of such a policy or bond during the term of any such contract shall be a breach thereof and forthwith terminate it. All provisions of law applicable to motor vehicle liability policies and bonds as defined as aforesaid shall apply to policies and bonds containing such additional amount of indemnity, protection or security.

For the furnishing of ambulance service. Contracts for such service may be made for periods not exceeding three years.

For the installation and maintenance, subject to such laws as may be applicable, of mechanical traffic signal light systems for the control and regulation of traffic on ways within its control, including poles, wires and other necessary apparatus upon, over or under such ways. Such a contract may provide for payments by such town over a period not exceeding five years.

To pay interest at a rate not exceeding four per cent per annum, during the lives of any persons in being at the time of entering into such contract, upon any cash gift which it may lawfully receive.

For lighting public highways and public grounds for a period not exceeding ten years.

For an expert appraisal of taxable property. Contracts for such appraisals may be made by the assessors.

For the preparation of assessors' maps. Contracts for the preparation of such maps may be made by the assessors.

For laundry services for municipal hospitals and infirmaries for periods not exceeding three years.

For a supply of oxygen for municipal hospitals and infirmaries for periods not exceeding three years.

For leasing complex hospital and laboratory equipment having a value in excess of ten thousand dollars for periods not exceeding five years.

For the lease, or lease with an option to purchase, of data processing equipment. Contracts for such leases may be made for periods not exceeding five years.

For the purchase of data processing services in the absence of a lease or purchase of data processing equipment. Contracts for such purchase may be made for periods not exceeding five years.

For the purchase of oil and other fuel supplies. Contracts for such purposes may be made for periods not exceeding five years.

For the lease, purchase, or lease with an option to purchase of educational materials, educational equipment, and educational testing equipment and materials. Contracts for such leases may be made for periods not exceeding three years.

For the lease of land and buildings for educational purposes. Contracts for such leases may be made for periods not exceeding five years.

For elevator maintenance services for municipal buildings for periods not exceeding three years.

For providing homemaker services for a period not exceeding three years. Such contracts shall be made with private nonprofit homemaker care agencies and shall be approved by the board of health or any legally constituted board performing the powers and duties of a board of health.

For driver education courses for periods not exceeding three years.

For the maintenance of grounds and snow removal on school properties for periods not exceeding three years.

This section, so far as apt, shall apply to districts.

For the purchase of magazines and periodicals for periods not exceeding three years.

For the leasing, leasing with the option to purchase, or installment purchase of energy conservation equipment, including but not limited to boilers, furnaces, hot water and space heating equipment, for a period up to ten years, by a majority vote as defined in section 1 of chapter 44, and such leasing, leasing with the option to purchase or installment purchase, shall not be subject to debt limits.

Amended by St.1932, c. 271, § 6; St.1941, c. 351, § 3; St.1946, c. 358, § 1; St.1950, c. 521; St.1951, c. 798, §§ 1, 2; St.1954, c. 33; St.1957, c. 227, § 1; St.1958, c. 613, § 2A; St.1961, c. 307; St.1961, c. 313; St.1963, c. 115; St.1965, c. 50; St.1965, c. 874, § 3; St.1966, No. 63, §§ 1, 2; St.1966, No. 202, § 1; St.1966, c. 381; St.1968, c. 621; St.1969, c. 412; St.1969, c. 758, §§ 1 to 4; St.1969, c. 849, § 24; St.1970, c. 238; St.1970, c. 674; St.1971, c. 3; St.1971, c. 71; St.1971, c. 128; St.1971, c. 952; St.1972, c. 25; St.1973, c. 6; St.1974, c. 260, § 1; St.1974, c. 693; St.1974, c. 715; St.1975, c. 46; St.1975, c. 74; St.1977, c. 421; St.1978, c. 119, § 1; St. 1978, c. 575; St.1979, c. 281; St.1979, c. 796, § 5.

§ 4A. Governmental units; joint operation of public activities; termination of agreement; "governmental unit," defined

Any governmental unit, as hereinafter defined, may enter into an agreement with one or more other governmental units to perform jointly or for such other unit or units any service, activity or undertaking which each contracting unit is authorized by law to perform, if such agreement is authorized by each party thereto, in a city by the city council with the approval of the mayor and in a town or district by a town or district meeting; except, however, that when such agreement involves the expenditure of funds for educational purposes accepted pursuant to section fifty-three A of chapter forty-four, or the expenditure of funds for establishing supplementary education centers and innovative educational programs, the agreement and its termination shall be authorized by the school committee. Any such agreement may be terminated by any party thereto at the end of any fiscal year if such termination is authorized by the terminating unit in the manner aforesaid; provided, that notice of such termination is given to each other party to the agreement at least sixty days prior to the date of termination. A governmental unit may enter into an agreement with any other governmental unit providing for joint fire, rescue and ambulance service and for the joint disposal of refuse, garbage or offal for a period not exceeding twenty years. The words "governmental unit" as used herein shall mean a city or town, a regional school district, or a district as defined in section one A.

All bills and payrolls submitted for work done under any such agreement shall be plainly marked to indicate that the work was done under authority thereof. Any reimbursement for or contribution toward the cost of such work shall be made at such intervals as the agreement provides. The amount of reimbursement received under any such agreement by any governmental unit shall be credited on its books to the account of estimated receipts, but any funds received under the provisions of section fifty-three A of chapter forty-four for contribution toward the cost of such work may be expended in accordance with the said provisions. The equipment and employees of a governmental unit while engaged in performing any such service, activity or undertaking under such an agreement shall be deemed to be engaged in the service and employment of such unit, notwithstanding such service, activity or undertaking is being performed in or for another governmental unit or units.

Added by St.1945, c. 438. Amended by St.1966, c. 286; St.1969, c. 85; St.1969, c. 356; St.1969, c. 758, § 5; St.1975, c. 344.

§ 4B. Purchases by towns and districts; bids; letting of contracts; application of section; posting; penalties

Unless otherwise provided by by-law or special law in towns and districts, no contract for the purchase of equipment, supplies or materials, the actual or estimated cost of which amounts to two thousand dollars or more, except in cases of special emergency involving the health or safety of the people or their property, shall be awarded unless proposals for the same have been invited by advertisement in at least one newspaper, if any, published in the town or district, otherwise in at least one newspaper of general circulation in the town or district, such publication to be at least one week before the time specified for the opening of said proposals. Such advertisement shall state the time and place for opening the proposals in answer to said advertisment, and shall reserve to the town or district the right to reject any or all such proposals. All such proposals shall be opened in public. No bill or contract shall be split or divided for the purpose of evading any provisions of this section. Materials purchased by any town, under specifications of the state department of public works, and at prices established by said department of public works, pursuant to advertising and bidding for such purpose, in connection with work to be performed under the provisions of chapter eighty-one or chapter ninety, shall not be subject to the requirements of this section. The provisions of this section shall apply to regional school districts. The provisions of this section shall not be construed to prevent the purchase of supplies for municipally operated hospitals without advertised public bids under group purchasing contracts with any agency which has been certified for this purpose by the director of the bureau of accounts, provided that such contracts are filed with the town accountant or city auditor.

The name and address of every person whose contract or contracts with the town involve a cumulative cost in excess of two thousand dollars during the fiscal year of said town shall be posted in the office of the town clerk by the town accountant of said town.

The provisions of this section shall be deemed to have been complied with on all purchases made under the provisions of sections twenty-two A and twenty-two B of chapter seven when one municipality acting on behalf of other municipalities complies with the provisions of this section, or when purchases are made from a vendor holding a contract with the commonwealth for the item or items being purchased.

Whoever violates any provision of this section shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one-half years, or by both said fine and imprisonment; and in the event of final conviction, said person shall be incapable of holding any office of honor, trust or profit under the commonwealth or under any county, district or municipal agency.

Added by St.1951, c. 25, § 3. Amended by St.1951, c. 678; St.1960, c. 592, § 1; St.1967, c. 44, § 2; St.1967, c. 79, § 1; St.1969, c. 758, § 6; St.1972, c. 61, § 1; St.1972, c. 320, § 1; St.1974, c. 199, § 1; St.1979, c. 206.

§ 4D. Contracts with state or public authority for construction of public works

Any governmental unit, as defined in section four A, may enter into an agreement with the commonwealth or with any public authority, whereby the commonwealth acting through a duly authorized agency, or such public authority, will perform for such governmental unit, any service or activity or undertaking which said governmental unit is authorized by law to perform for itself.

All bills submitted for payments on account of work done under such agreement shall be plainly marked to indicate that the work was done under authority thereof, and payments at such intervals as provided by the agreement shall be made to the commonwealth or the public authority or upon direction of the commonwealth or the public authority, at such intervals as the government provides, directly to the contractor performing the work under agreement.

Any such agreement may provide that such governmental unit pay to the state treasurer or to the treasurer of such public authority, as the case may be, its respective share of the estimated cost of the work to be done, and that the state agency or public authority which is a party to the agreement be authorized to expend the money for the purposes for which the payment is submitted. The provisions of sections twenty-six to twenty-nine, inclusive, and of sections forty-four A to forty-four L, inclusive, of chapter one hundred and forty-nine, and the provisions of sections thirty-nine F to thirty-nine M of chapter thirty, shall apply to all such work performed by a public authority to the same extent and in the same manner as they are applicable to the commonwealth.

Added by St.1967, c. 883, § 1. Amended by St.1978, c. 199.

§ 4E. Collaborative educational programs and services; agreements; boards; trust fund for receipts; annual state grant; treasurer; amendment

The department of education through its regional offices shall cooperate with cities, towns and regional school districts which seek to enter into collaborative agreements for the purposes hereinafter provided in this section.

Any school committee, acting for and in behalf of its city, town or regional school district, may enter into an agreement with one or more other such committees to conduct jointly educational programs and services which permit such committees to supplement or strengthen school programs and services; provided, that such agreement has been authorized by vote of each such committee and approved by the commissioner of education.

The agreement shall state the purposes of the program or service, the approximate amounts of money to be contributed by each city, town or regional school district, the cost savings aspects of the program or service and any other matters not incompatible with law which the committees deem advisable.

The agreement may be terminated at the end of any fiscal year by written notice of termination given by any party which has entered into such agreement to each other such party at least six months before the end of such fiscal year. Such agreement shall provide for the disposition, upon termination thereof, of all unencumbered funds and all equipment and supplies held pursuant thereto.

Each school committee entering into such an agreement shall appoint one person from its own membership or designate one person from outside its membership to form a board to be known as an educational collaborative board. The department of education shall be represented on each such board by the coordinator of the regional center, or his designee, in which the majority of such member municipalities are located, but such coordinator, or his designee, shall not be entitled to vote. Each such board shall select its own executive officer and shall adopt an appropriate name for purposes of identification.

Said collaborative board may contract for the purchase of supplies and materials and for the services of such persons as it deems necessary in order to carry out its functions.

Each education collaborative board shall establish and manage a trust fund, to be known as an educational collaborative fund, and each such fund shall likewise be designated by an appropriate name. All monies contributed by the member municipalities, and all grants or gifts from the federal government, state government, charitable foundations, private corporations, or any other source, shall be paid to the educational collaborative board and deposited in the aforesaid fund.

Each educational collaborative board shall appoint a treasurer, who may be a treasurer of a city, town or regional school district belonging to the collaborative. Said board may compensate such treasurer for his services as treasurer of the collaborative board in such amount as it may determine. Notwithstanding any provision of this section to the contrary, no member of the collaborative board shall be eligible to serve as treasurer of said board.

Each collaborative treasurer shall give bond annually for the faithful performance of his duties as collaborative treasurer in a form approved by the commissioner of corporations and taxation and in such sum, not less than the amount established by said commissioner, as shall be fixed by the collaborative board. Said treasurer shall receive and disburse any monies of the trust fund of the educational collaborative board he serves without further appropriation.

Upon the recommendation of the department of education, the state treasurer shall annually disburse to certain educational collaborative boards a monetary grant, pursuant to regulations adopted by the board of education. Said grant shall be subject to appropriation and shall not exceed a total sum of ten thousand dollars per individual city, town and regional school district which becomes a party to each such educational collaborative program or service as provided under the written terms of a specific agreement.

Notwithstanding any provision of law to the contrary, no educational collaborative agreement between or among the school committees of two or more cities, towns or regional school districts requiring the approval of the department of education, shall be made except under the provisions of this section. Any educational collaborative heretofore formed under the provisions of section four of chapter seventy-one B or formed under the provisions of this section in effect prior to the effective date of chapter seven hundred and ninety-seven of the acts of nineteen hundred and seventy-four shall amend its agreement to conform to the provisions of this section. A copy of said amended agreement shall be filed with the department of education.

Added by St.1970, c. 889. Amended by St.1972, c. 753; St.1974, c. 797; St.1975, c. 323, §§ 1, 2; St.1978, c. 481, §§ 1 to 4.

§ 4F. Purchase of clothing or apparel; restrictions

In any city or town which accepts the provisions of this section, any contracts or orders for items of clothing or apparel shall be given to such establishments only as submit to the city or town the name and address of the manufacturer of such items, and the names and addresses of any and all contractors for such items, and only to such establishments as pay the prevailing rate of wages, determined by the commissioner of labor and industries. Said prevailing rates shall be based on wage rates and working hours that have been established by collective bargaining agreement or understanding between organized labor and employers in the apparel industry. Said commissioner shall, upon application from a city or town, prepare and furnish for the use of such city or town a list of the several classifications of labor usually performed by the employees in the apparel trades, together with the prevailing rate of wages and working hours.

A written declaration by the bidder on said contracts or orders for items of clothing or apparel, upon submission of his bid, that each garment to be purchased shall have a union label affixed to such garment shall be sufficient evidence that said manufacturer or contractor pays the prevailing rate of wages based on wage rates and working hours established by collective bargaining or understanding between organized labor and the employer. Every contractor, subcontractor or other employer, engaged in any work to which this section applies, shall keep a true and accurate record of employees, showing the name, address and occupational classification of each employee, and the hours worked by, and the wages paid to, each such employee, and shall furnish to the city or town upon request a true statement of the contents of such record.

Added by St.1973, c. 84.

PURPOSES FOR WHICH TOWNS MAY APPROPRIATE MONEY

§ 5. Authorization

A town may at any town meeting appropriate money for the exercise of any of its corporate powers, including the following purposes:

(1) To pay a proper charge of an insurance company for acting as surety on the official bond of any town officer; to pay a proper charge for effecting insurance providing indemnity for or protection to a town treasurer or town collector of taxes against his liability for the loss, without fault, connivance or neglect on his part, of money for which he is accountable to the town; to pay a proper charge for effecting insurance for payment of damages incurred pursuant to chapter two hundred and fifty-eight, or for payment of such damages; pay a proper charge for effecting insurance providing indemnity for any

such municipal employee named in section one hundred of chapter forty-one against loss by reason of any expenses within the provisions of said section; to pay a proper charge to prevent loss by reason of destruction or damage of buildings or personal property by fire insurance policies issued in the commonwealth, subject, however, to the recommendations of the school committee with respect to the nature and extent of such insurance of buildings and personal property under its control; to pay a proper charge for effecting insurance to cover the town's liability to pay workmen's compensation, or, if the town has elected to establish and maintain an insurance fund to pay workmen's compensation under section thirteen A, or if the town has determined otherwise to pay such workmen's compensation direct, to pay a proper charge for aggregate excess or single accident reinsurance to protect the town from extraordinary workmen's compensation losses; or to pay a proper charge for insurance against damage to or loss of any town property, real or personal, by any cause whatsoever, normally covered by insurance policies issued in the commonwealth and not otherwise provided for herein.

(2) For the support of public schools authorized or required by law, and for conveying pupils to and from the public schools, or, if it maintains no high school or public school of corresponding grade, but affords high school instruction by sending pupils to other towns, for the necessary transportation expenses of such pupils, the same to be expended by the school committee in its discretion.

(3) For the relief, support, maintenance and employment of the poor.

(4) For laying out, discontinuing, making, altering and repairing public ways, and for materials used and labor employed thereon.

(5) For the purchase and improvement of parks laid out under chapter forty-five.

(5A) For supplying itself and its inhabitants with water as authorized by law.

(6) For the printing and publishing of town records.

(7) For procuring the writing and publishing of town histories.

(8) For burial grounds.

(9) For encouraging the destruction of noxious animals.

(9A) For the extermination and control of beavers when such animals are declared to be a nuisance by the city council or board of selectmen.

(10) For planting shade trees in accordance with section seven of chapter eighty-seven.

(11) For necessary aid to veterans and their dependents under the provisions of chapter one hundred and fifteen.

(12) For erecting headstones or other monuments at the graves of persons who served in the war of the revolution, the war of eighteen hundred and twelve, the Seminole war, the Mexican war, the war of the rebellion or the Indian wars or who served in the military or naval service of the United States in the Spanish American war or in World War I or in World War II or during the Korean emergency or more than one hundred and eighty days on active duty in the armed forces of the United States between February first, nineteen hundred and fifty-five and the termination of the Vietnam campaign as declared by proper federal authority, or who served in the military service of the commonwealth in time of war; for acquiring land by purchase or by eminent domain under chapter seventy-nine, purchasing, erecting, equipping or dedicating buildings, or constructing or dedicating other suitable memorials, for the purpose of properly commemorating the services and sacrifices of persons who served as aforesaid; for the decoration of the graves, monuments or other memorials of persons who served as aforesaid and the proper observance of Memorial Day, Veterans Day and other patriotic holidays under the auspices of the following: —local posts of the Grand Army of the Republic, United Spanish War Veterans, The American Legion, Veterans of Foreign Wars of the United States and Jewish War Veterans of the United States, and of the American Veterans of World War II, AMVETS—Department of Massachusetts, and of the Seabee Veterans of America, Inc.—Department of Massachusetts, and of the Franco-American War Veterans, Inc., and of the Italian American War Veterans of the United States, Incorporated, and of the American Portuguese War Veterans Association, local chapters of the Disabled American Veterans of the World War and of the American Veterans' Committee, Inc., local units of the Massachusetts State Guard Veterans, Kearsarge Association of Naval Veterans, Inc., local garrisons of the Army and Navy Union of the United States of America, local chapters of the Massachusetts Society of the Sons of the American Revolution, local chapters of the Massachusetts Daughters of the American Revolution, local detachments of the Marine Corps League, local clubs of the Yankee Division Veterans Association, local barracks of the Veterans of World War I of the U.S.A., local camps or other duly organized units of the Sons of Union Veterans of the Civil War or local tents of the Daughters of Union Veterans of the Civil War or local chapters of American Gold Star Mothers, Inc., or local chapters of the Military Order of the Purple Heart, the Fleet Reserve Association, United States Navy, and The Society of the War of 1812 in the Commonwealth of Massachusetts (Incorporated), the Polish-American Veterans of Massachusetts, Inc., and its affiliated posts, the Polish Legion of American Veterans, the United American Veterans, and its affiliated posts and affiliated units of the Massachusetts Council of Minutemen; or for keeping in repair graves, monuments, statutory, honor

rolls or other memorials erected to the memory of such persons or of the firemen and policemen of the town who died from injuries received in the performance of their duties in the fire or police service or for decorating the graves of such firemen and policemen or for other memorial observances in their honor. Money appropriated in honor of such firemen may be paid over to, and expended for such purposes by, any veteran firemen's association or similar organization.

(13) For marking historic spots within its limits.

(14) For necessary and convenient drinking troughs, wells and fountains in the public ways, public squares and commons.

(15) For the employment of counsel, if authorized by a two thirds vote, to represent the town at any hearing in which it is interested before a committee of the general court; but no expense is hereby authorized except such as would be incurred in presenting a case before the judicial courts, and a detailed account of all expenses incurred shall be filed with the town clerk and be open to the inspection of all the taxpayers of the town.

(16) For prosecuting or defending proceedings, however instituted, before a court, the department of public utilities, or any other public board or commission exercising the same or similar powers, in all matters relative or incidental to the prescribing of rates or fixing of charges by public service corporations or the exercise of rights under their franchises.

(16A) For the employment of legal counsel for general purposes.

(17) For procuring the detection and apprehension of any person committing a felony therein.

(18) For the establishment, maintenance or increase of a public library therein, and for the erection or provision of suitable buildings or rooms therefor, or for maintaining a library therein to which the inhabitants have free access and of which they have the use, and for establishing and maintaining a public reading room in connection with and under the control of the managers of such library.

(19) For the performance of the duties of the board of health and for the establishment and maintenance of hospitals, or of beds therein, sanitary stations, clinics, dispensaries and quarantine grounds, and for the care of indigent persons suffering from disease, in accordance with the provisions of chapter one hundred and eleven.

(19A) For the construction, maintenance, and operation of an incinerator or incinerators located within the town for the purpose of disposing of waste, refuse and garbage collected by the town or by other persons or other municipalities. A city or town may establish charges for the disposal in said incinerator of waste, refuse and garbage collected by contractors, other municipalities, or individuals.

(20) For the erection and maintenance of a hospital for the reception of persons requiring relief during temporary sickness, or for the erection and maintenance of a public medical institution as defined under section two of chapter one hundred and eighteen E. Such hospitals and institutions shall be managed by trustees or other officers and agents appointed in accordance with ordinances, by-laws, rules or regulations made by the city council or the town.

(21) For the employment of district or other nurses.

(21A) For the purchase or hire and for the maintenance of ambulances; provided, that the cost of maintenance and operation of such ambulances, including maturing debt and interest, may be defrayed by charges, established by the city or town, upon persons transported by said ambulances.

(22) For reimbursing persons for the use of property loaned to, or seized or requisitioned by, the police or fire department for the proper performance of its duty in cases of emergency, or for damage to or loss of such property.

(23) For suppressing pests under chapter one hundred and thirty-two.

(24) For constructing telegraph lines for the use of the town upon, along and under the public ways and squares within its limits, subject to the provisions of chapter one hundred and sixty-six, so far as applicable.

(25) For establishing and maintaining public gymnasiums, swimming baths and such other means of instruction or exercise as the town may authorize. Every such public place shall be managed under the direction of the selectmen of the town.

(25A) For acquiring land for, and the establishment, maintenance and operation of bathing beaches and swimming pools for recreation and physical exercise; provided, that the cost of maintenance and operation of such bathing beaches and swimming pools, including maturing debt and interest, may be defrayed by charges established by the city or town upon persons using said bathing beaches or swimming pools. Nothing in this clause shall prohibit the maintenance and operation at municipal expense of bathing beaches or swimming pools which have been donated to a city or town for public use.

(25B) For acquiring land for, and the construction, maintenance, and operation of municipal golf courses, including buildings and equipment and furnishings for recreation and physical exercise; provided that the cost of maintenance and operation of such golf courses, including maturing debt and interest, may be defrayed by charges established by the city or town upon persons using said golf courses.

(26) For public band concerts, or for music furnished for public celebrations.

(27) For the celebration of the fourth of July, for the celebration of the return of veterans, or for the observance of an old home week or day, to take place during any week or upon any day of the year in which the appropriation is made, during which the town may conduct appropriate celebrations in honor of returning residents and other invited guests and hold exercises of historic interest; and, by a two thirds vote, for the celebration of the anniversary of its settlement or of its incorporation at the end of a period of twenty-five, or of any multiple of twenty-five years therefrom, and for publishing the proceedings thereof. Money may be appropriated for the celebration of such anniversary not earlier than two years prior to such celebration. If there is any question as to the date of the settlement, the date shall be determined by the selectmen, subject to the approval of the voters. The celebration of the anniversary may be held at any time during the year.

(27A) For the expenses of participating in the celebration of the anniversary of the settlement or of the incorporation of another town, as provided for in clause (27), any appropriation hereunder to be by a two thirds vote. Appropriations under this clause may be made only by towns which were formerly a part of the town holding the celebration, by towns which are contiguous to the town holding the celebration and by towns adjoining such contiguous towns.

(27B) For the celebration of the two hundredth or two hundred and fiftieth anniversary of its settlement or of its incorporation any city or town may appropriate money annually during the five years preceding such anniversary. Such city or town may establish in its treasury a special fund in which shall be deposited such sums as may be appropriated by it under the provisions of this clause, and any and all sums of money received by way of income from the sale of commemorative items or from admission charges for commemorative ceremonies or events. Any and all such sums received by the treasurer shall be kept separate from any other moneys, funds or property of such city or town, and the principal and interest thereof may, from time to time upon the authorization of the mayor or city manager, as the case may be, the board of selectmen, or of the majority of any special committee established to plan such celebration, be expended for the purposes of said celebration in the year of such celebration and in the year preceding or succeeding same. Any surplus remaining in said special fund after such celebration is concluded, shall be transferred by said treasurer into the treasury of such city or town.

(28) For carrying out the provisions of sections seventy-three to eighty-one GG, inclusive, of chapter forty-one. Such appropriation shall be expended by the board of survey or by the planning board established under section eighty-one A of said chapter and the board of appeals under section eighty-one Z of said chapter, as the case may be.

(29) For erecting and maintaining forest fire observation towers, as provided by section twenty-three of chapter forty-eight, and for the prevention of forest fires as provided in section eleven of chapter forty and in section twenty-four of said chapter forty-eight.

(30) For contributions to the cost of street railway service under section one hundred and sixty-one of chapter one hundred and sixty-one.

(31) For the establishment and maintenance of children's health camps, as provided by sections sixty-two A to sixty-two G, inclusive, of chapter one hundred and eleven or for the care and treatment of underweight and undernourished children of school age by contract as provided by section sixty-two H of said chapter one hundred and eleven.

(32) For the payment of reasonable hospital, medical, surgical, nursing, pharmaceutical, prosthetic and related expenses incurred by any member of its fire fighting force or any member of its police force as the natural and proximate result of an accident occurring, or of undergoing a hazard peculiar to his employment, while acting in the performance and within the scope of his duty without fault of his own.

(33) For acquiring land, or for the lease thereof for a period of not more than five years, for public parking places and maintaining the same.

(34) For the necessary expenses of municipal officers and employees of any particular department incurred outside the commonwealth in securing information upon matters in which the city or town is interested or which may tend to improve the service in such department, including any training program or programs for municipal officers or municipal employees, relating to special aspects of their duties and including attendance at state police schools conducted by the department of public safety, attendance at schools for the training of local police officers conducted by the Federal Bureau of Investigation, the Massachusetts Chiefs of Police Association, the Boston police department, the Worcester police department, the Springfield police department, and the metropolitan district commission police department and attendance at courses at colleges and universities for the training of police officers, authorized by the board of selectmen in a town, or by the town manager in a town having the same, by the mayor in a city, or by a city manager in a city having the same, if such appropriation is specified to be and is limited to such expenses as aforesaid. Such expenses may also be incurred anywhere within the commonwealth and in such case shall be chargeable against any appropriation of the department incurring the same. Total appropriations in any year under the provisions of this clause for the necessary expenses of municipal officers and employees of any particular depart-

ment incurred outside the commonwealth shall be limited to one one-hundredth of one percentum of the equalized valuation of the city or town as defined in section one of chapter forty-four.

(35) For the establishment, maintenance and operation of public airports within or without the limits of the town. Such an airport may be established, maintained and operated jointly by two or more towns.

(36) For the improvement of low lands and swamps and the eradication of mosquitoes under chapter two hundred and fifty-two, or for the eradication of mosquitoes by the board of health in a town not then included within an area described by an identifying name for the purposes of section five A of said chapter two hundred and fifty-two. The authority of said board of health may be delegated to another agency, provided, however, said board of health notifies the state reclamation board of such delegation, and provided, further, that said agency files annually with the said reclamation board a detailed report of their mosquito control program.

(36A) For acquiring information regarding the growth of ragweed, goldenrod and poison ivy within its limits and for doing such things as are considered necessary to suppress, eradicate and destroy ragweed, goldenrod and poison ivy. Such appropriations shall be expended under the direction of such department as may be designated by the town meeting in a town or the city council in a city. Duly authorized officials of any city or town in which such appropriations are voted, or their agents, representatives or employees, may enter upon land within the limits thereof to carry out the purposes for which such appropriations are voted.

(36B) For the control of algae, weeds and other aquatic nuisances in lakes, ponds, streams and other bodies of water within a city or town. Such appropriations shall be expended under the direction of such department as may be designated by the town meeting in a town or the city council in a city, or the money so appropriated may be paid to the state treasurer and be expended by the department of public health for said purposes within the limits of the city or town.

A city or town may participate in the cost sharing program established by this section for the control of aquatic nuisances in those waters of the commonwealth selected for control by the department of public health under the provisions of section five F of chapter one hundred and eleven.

To participate in such program, a city or town may contribute up to one half of the total cost of the control program but not less than one quarter of the total cost as determined by said department. If a body of water is located in a state park or reservation, or if the body of water is a great pond which said department determines is more heavily used by inhabitants of cities or towns other than the one in which the pond is located, the entire cost of the control may be borne by the commonwealth; provided, however, that if a state agency operates a recreational facility on a body of water the department of public health may authorize the city or town to contribute less than one quarter of the total cost. The department in determining the amount of any such contribution shall consider the following: (1) the economic capabilities of the city or town as determined by the department of corporations and taxation, (2) the use of the waters by communities outside of the city or town in which the waters are located, and (3) the advantage to the commonwealth of the work. When the body of water is located in more than one city or town, the local contribution shall be apportioned in accordance with the amount of water area in acres lying in each municipality as determined by the department of public health. In instances where a city or town boundary is merely contiguous to the shoreline of the waters but does not encompass any water area, the apportionment of costs shall be made in accordance with the amount of shoreline in linear feet lying in each town as determined by the department of public health. All city and town funds to be used in the cost sharing program for the control of aquatic nuisances shall be paid to the state treasurer and may be expended by the department of public health for said purposes.

(37) For providing proper facilities for public entertainment in connection with the holding of conventions in the town, for paying expenses incidental to such entertainment, and for the entertainment of distinguished guests, a sum not exceeding, in any one year, one one-hundredth of one per cent of the equalized valuation of the city or town as defined in section one of chapter forty-four, but in no event more than one hundred thousand dollars.

(38) For the preservation, care and maintenance of, and for the further protection by insurance and otherwise of the town's interest in, real estate held by it under purchases and takings for non-payment of taxes, such appropriation to be expended on account of any particular real estate only in case there shall have been filed with the clerk of the town a certificate of its mayor or selectmen approved by the commissioner of revenue, stating that the town's interest therein has not been reasonably protected, and subject to the provisions of section fifty A of chapter sixty.

(39) For providing co-operation with the federal government in unemployment relief and other projects, of direct or indirect benefit to the town or its inhabitants.

(40) To provide eyeglasses, spectacles and hearing aids for school children eighteen years of age or under who are in need thereof and whose parents or guardians are financially unable to furnish the same. Money so appropriated shall be expended under the direction of the mayor and city council of a city and the selectmen of a town.

(40A) For the payment, by providing insurance coverage or otherwise, of the reasonable hospital, medical and surgical expenses incurred by or in behalf of any student in any of its public schools by reason of injuries sustained by him or her while participating, or practising or training for participation, in any game, meet or contest conducted or held as a part of or in connection with the physical education or athletic training program of its school department. Money so appropriated shall be expended under the direction of the school committee.

(40B) For the payment, by providing insurance coverage or otherwise, of the reasonable hospital, medical and surgical expenses incurred by or in behalf of any student in any of its public schools by reason of injury sustained by him while engaged in shop or laboratory work or any authorized activity or assignment at or away from such school. Money so appropriated shall be expended under the direction of the school committee.

(40C) For providing co-operative or complementary facilities to out-patient clinics established or to be established in accordance with the provisions of chapter nineteen, in co-operation with the department of mental health and other agencies collaborating with said department and for providing payment for services rendered or to be rendered by such public or private agencies. Monies so appropriated may be expended under the direction of the school committee or board of health, or under their joint direction.

(41) For the purpose of stocking ponds and other inland waters, located within the town limits, with fish and of liberating game, as defined in section one of chapter one hundred and thirty-one, within said limits and to meet necessary expenses incidental thereto, including the feeding of game so liberated, a sum not to exceed two thousand dollars. Two or more towns bordering upon the same pond or other inland waters may join in stocking the same hereunder. The stocking of waters with fish and the liberation of game hereunder shall be subject to the written approval of the director of the division of fisheries and wildlife of the department of fisheries, wildlife and recreational vehicles.

(42) For the purchase of token awards to be made by a playground or recreation commission, including any similar board or commission organized or authorized under any special law, for participation in any game, meet or contest conducted or held as a part of or in connection with the recreational program of such commission or board, a sum not exceeding, in any one year, one one-thousandth of one per cent of the equalized valuation of the city or town as defined in section one of chapter forty-four, but in no event more than one thousand dollars.

(43) For the granting of monthly cash awards to municipal employees who, in the judgment of a committee to be appointed by the mayor, or in cities governed by the Plan E form of charter the city manager, or in towns by the chairman of the board of selectmen, submit the most valuable suggestions for improving the service of the municipality, a sum not exceeding, in any one year, one one-thousandth of one per cent of the equalized valuation of the city or town as defined in section one of chapter forty-four, but in no event more than one thousand dollars.

(44) For the purpose of paying part of the premiums for group life insurance for permanent employees under the provisions of sections one hundred and thirty-three to one hundred and thirty-eight A, inclusive, of chapter one hundred and seventy-five. The amount of such insurance for any employees whose yearly gross compensation is less than two thousand dollars shall not exceed one thousand dollars, and for any employee whose yearly gross compensation is two thousand dollars or more, such amount shall not exceed two thousand dollars. Any increase in the amount of insurance made possible by an increase in compensation shall take effect on the next succeeding policy anniversary, but no reduction in the amount of insurance shall be required on account of a reduction in compensation. Yearly gross compensation shall not include any overtime pay, and, in the case of hourly workers, shall be computed on the basis of scheduled required work hours. Fifty per cent of the amount of any premium thereon shall be paid by the town. Any dividends or other refunds or rate credits shall inure to the benefit of the town and shall be applied to the cost of such insurance.

(44A) For the purpose of paying part of the premiums for group life insurance, accident, hospitalization, medical and surgical insurance for certain employees and their dependents under the provisions of chapter thirty-two B.

(45) For the purpose of erecting and maintaining public bathhouses in a beach district as provided in sections twelve B to twelve G, inclusive.

(46) For the celebration of Labor Day and for the proper observance and celebration of the Christmas season by the decoration and illumination of public buildings and public streets, and for the purchase, installation and decoration of Christmas trees upon municipal lands.

(46A) For the proper observance of United Nations Day, Loyalty Day, or any other day that the governor may by proclamation from time to time designate as a day of municipal observance, to an amount not exceeding two thousand dollars annually.

(47) For the purpose of establishing and maintaining a business and industrial commission to promote business and industry, a sum not exceeding in any one year one hundred and fifty thousand dollars.

(48) For the construction, maintenance and operation of an artificial ice-skating rink for which refrigeration equipment is required; provided, however, that the cost of maintenance and operation of said artificial ice-skating rink, including maturing debt and interest, shall be defrayed by charges established by the city or town upon persons using said rink.

(49) For the purpose of coordinating or conducting programs dealing with problems of the aging and to promote facilities for the health, education, welfare and recreation of the aging, as authorized by section eight B.

(50) For the purpose of matching appropriation by the commonwealth for the control of the disease known as encephalitis such sums as may be required, but not more than five thousand dollars. Money so appropriated shall be expended under the direction of the state reclamation board.

(51) For the establishment and maintenance of a conservation commission. In addition a city or town may appropriate money in any year to a conservation fund of which the treasurer shall be custodian. He may deposit or invest the proceeds of said fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Corporation, or national banks, or invest it in paid up shares and accounts of and in co-operative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth, and any income therefrom shall be credited to the fund. Monies in the fund may be expended by said commission for any purpose, other than a taking by eminent domain, authorized by section eight C.

(52) For the control of any disease determined by the department of public health to be of epidemic proportions.

(53) For the acquisition and maintenance of tidal marshes and estuaries as reservations for the preservation of their natural beauty, and the protection of the fish, shellfish and other wildlife therein.

(54) For payment to the commonwealth of the town's share of the cost of construction, including acquisition of land, of multi-purpose reservoirs and other water resource developments, which are to be constructed under the direction of the water resources commission.

(55) For the compensation of a person for services rendered by him as a skin diver, at the rate of his usual occupation, when, in case of emergency, such services are requested by the police or fire department.

(56) To mark, preserve, promote and develop historical or archeological sites and landmarks and to establish and maintain an historical commission.

(57) For the necessary expenses of implementing an in-service training program for engineering employees.

(58) For the payment to the commonwealth of the town's share of the cost of conducting water favorability studies by or under the direction of the water resources commission, as authorized by section nine of chapter twenty-one.

(59) For towing motor vehicles abandoned on any private way or private property.

(60) For the necessary expenses of implementing an in-service training program for the police department, and for the employment of student interns while attending public or private institutions of higher education with degree granting powers in the field of law enforcement, police administration, or scientific detection; provided, however, that each such student intern is enrolled in courses leading to one of the aforementioned degrees; and provided, further, that no such student intern shall during the period of his internship be armed.

(61) For the payment of its share of the cost of community action programs established under title II of an act of Congress known as the Economic Opportunity Act of 1964.

(62) For the indemnification of an unpaid member of a civil defense agency, injured while responding to a call for assistance issued by a lawful authority of the appropriating town and for which such member would not be entitled to indemnification under any other provision of law.

(63) For the purpose of establishing and maintaining a youth commission as authorized by the provisions of section eight E of chapter forty.

(64) For the purpose of establishing, constructing and maintaining shoppers' malls within the public ways, including the paving, landscaping and beautification thereof and the installation of utilities and other public conveniences thereat.

(65) For the purpose of payment of rewards under the provisions of paragraph (*b*) of section fourteen of chapter two hundred and sixty-nine.

(66) For the necessary expense of implementing an agreement entered into under the provisions of section eight G.

(67) For the necessary expenses, incurred to move the furniture and other personal effects from within the commonwealth of a newly appointed chief executive or chief administrative officer who is required to live within the city or town which employs him, a sum not exceeding one thousand dollars.

(68) For the reconstruction of an unaccepted street upon petition of the owners of fifty per cent of the lineal footage on such street; provided, however, the expenses of such reconstruction may be charged to all abutters in proportion to the lineal footage owned by said abutters on such street.

(69) For the maintenance of a recycling commission. In addition a city or town may appropriate money in any year to a recycling fund of which the treasurer shall be custodian. He may deposit or invest the proceeds of said fund in savings banks, trust companies incorporated under the laws of the commonwealth, banking companies incorporated under the laws of the commonwealth which are members of the Federal Deposit Insurance Corporation, or national banks, or invest it in paid up shares and accounts of and in cooperative banks or in shares of savings and loan associations or in shares of federal savings and loan associations doing business in the commonwealth, and any income therefrom shall be credited to the fund. Monies in the fund may be expended by said commission for any purpose, other than a taking by eminent domain.

(70) For acquiring restrictions in perpetuity as defined in sections thirty-one to thirty-three, inclusive, of chapter one hundred and eighty-four, for the purpose of retaining lands predominantly in their agricultural or horticultural use, on lands devoted to agricultural or horticultural uses as defined in sections one to five, inclusive, of chapter sixty-one A.

(71) For the purpose of reimbursing an employee of a city or town for the loss or damage to personal property owned by said employee while it is in the care, custody or control of such city or town, to an amount of not less than one thousand dollars in value or more than two thousand dollars in value.

(72) For the establishment and maintenance of a municipal waterways improvement and maintenance fund to receive revenue under subsection (*i*) of section two of chapter sixty B; and sums received from the commonwealth or the federal government and for the appropriation of monies in said fund for (*a*) maintenance, dredging, cleaning and improvement of harbors, inland waters and great ponds of the commonwealth, (*b*) the public access thereto, (*c*) the breakwaters, retaining walls, piers, wharves and moorings thereof, and (*d*) law enforcement and fire prevention.

For the compensation of all town officers whose election or appointment is authorized or required by law, and for all other necessary charges arising in such town.

Amended by St.1932, c. 114, § 3; St.1933, c. 153, § 2; St.1933, c. 245, § 2; St.1933, c. 318, § 3; St.1934, c. 154, § 1; St.1935, c. 28; St.1935, c. 106; St.1935, c. 179; St.1936, c. 132, § 1; St.1936, c. 163; St.1936, c. 211, § 5; St.1936, c. 390; St.1937, c. 185; St.1938, c. 142, § 1; St.1938, c. 172,

§ 1; St.1939, c. 19; St.1941, c. 217, § 2; St.1941, c. 599, § 4; St.1943, c. 99; St.1943, c. 177, § 1; St.1945, c. 391, § 2; St.1946, c. 358, §§ 2 to 9; St.1946, c. 409, § 2; St.1946, c. 526; St.1947, c. 144; St.1947, c. 340, § 5; St.1947, c. 468, § 2; St.1947, c. 525; St.1948, c. 89; St.1948, c. 174; St.1948, c. 445, § 1; St.1948, c. 660, § 24; St.1949, c. 118, § 2; St.1949, c. 163; St.1949, c. 761, § 11; St.1950, c. 27, § 2; St.1950, c. 101; St.1950, c. 141; St.1950, c. 157; St.1950, c. 354, § 2; St.1950, c. 478; St.1950, c. 492, § 2; St.1951, c. 113; St.1951, c. 149; St.1951, c. 718; St.1951, c. 798, § 3; St.1952, c. 118; St.1952, c. 239; St.1952, c. 247, § 1; St.1953, c. 149; St.1953, c. 209; St.1953, c. 535, § 1; St.1953, c. 576, § 2; St.1953, c. 674, § 9; St.1954, c. 149; St.1954, c. 297, § 2; St.1954, c. 627, § 16; St.1955, c. 85, § 1; St.1955, c. 271, § 1; St.1955, c. 291; St.1955, c. 385; St.1955, c. 716, § 1; St.1955, c. 760, § 2; St.1956, c. 77; St.1956, c. 152; St.1956, c. 211; St.1956, c. 495, § 2; St.1956, c. 596, § 1; St.1957, c. 22; St.1957, c. 223, § 2; St.1957, c. 361; St.1957, c. 406, § 2; St.1958, c. 118, §§ 1, 2; St.1958, c. 124; St.1958, c. 176; St.1958, c. 390; St.1959, c. 57; St.1959, c. 59, § 2; St.1959, c. 73, § 1; St.1959, c. 208; St.1959, c. 376; St.1960, c. 3; St.1960, c. 91; St.1960, c. 236; St.1960, c. 626, § 3; St.1961, c. 20; St.1961, c. 357; St.1961, c. 498, § 2; St.1962, c. 580, § 2; St.1962, c. 672, § 1; St.1963, c. 60; St.1963, c. 479, § 2; St. 1963, c. 697, § 3; St.1964, c. 173; St.1964, c. 234; St.1964, c. 248; St.1964, c. 581, § 2; St.1964, c. 643, § 2; St.1965, c. 66; St.1965, c. 117; St.1965, c. 179; St.1965, c. 201; St.1965, c. 327; St.1966, c. 79; St.1966, c. 108; St.1966, c. 184; St.1966, c. 247; St.1967, c. 80; St.1967, c. 90; St.1967, c. 101; St.1967, c. 132, § 1; St.1967, c. 160, § 1; St.1967, c. 638; St.1969, c. 256; St.1969, c. 330; St.1969, c. 391, § 2; St.1969, c. 506; St.1969, c. 722, § 1; St.1969, c. 849, §§ 25 to 28; St.1970, c. 82; St.1970, c. 382, § 3; St.1971, c. 784, § 1; St.1972, c. 220, § 1; St.1972, c. 236; St.1972, c. 553; St.1973, c. 480; St.1973, c. 1155, § 6; St.1973, c. 1210, § 17; St.1974, c. 349, § 1; St.1974, c. 547; St.1975, c. 458; St.1975, c. 518, § 1; St.1975, c. 574; St.1975, c. 706, § 87; St.1976, c. 416, § 1; St.1976, c. 485; St.1977, c. 232, § 1; St.1977, c. 425; St.1978, c. 77; St.1978, c. 512, § 8; St.1978, c. 514, § 16; St.1978, c. 581, § 1; St.1979, c. 211.

§ 6K. Uniforms of public health nurses; purchase

A city or town which accepts this section may appropriate money for the purchase of uniforms for public health nurses employed by its board of health.

Added by St.1964, c. 89.

§ 8B. Council on aging; establishment; annual reports; recommendations by department; clerks and employees

A city by ordinance or a town by by-law may establish a council on aging for the purpose of coordinating or carrying out programs designed to meet the problems of the aging in coordination with programs of the department of elder affairs. The council shall submit an annual report to the city or town and shall send a copy thereof to the department of elder affairs. Said department shall from time to time review and evaluate such reports and make recommendations as to any required or needed changes in said local programs. The council may appoint such clerks and other employees as it may require.

Added by St.1956, c. 495, § 1. Amended by St.1957, c. 406, § 1; St.1964, c. 430, § 3; St.1966, c. 242; St.1973, c. 1168, § 17.

§ 12. Public baths or wash houses

A town which accepts this section, or has accepted corresponding provisions of earlier laws, by a two thirds vote at an annual meeting, may purchase or lease land, and erect, alter, enlarge, repair and improve buildings for public baths and wash houses, either with or without open drying grounds, and may make open bathing places, provide them with the requisite furniture, fittings and conveniences and provide instruction in swimming. Such town may establish rates for the use of such baths and wash houses, and appoint officers therefor, and may make by-laws for the government of such officers, and authorize them to make regulations for the management thereof and for the use thereof by non-residents of said town.

§ 12C. Construction of beach facilities; rules and regulations

Said commission shall construct, equip and maintain at beaches under its control public bathhouses with dressing rooms, lockers and toilet facilities, as well as parking facilities, and other recreational facilities, may make reasonable rules and regulations for the care, maintenance, protection, policing and equal public use of said beaches, bathhouses, parking areas, and other recreational facilities, and may make reasonable charges for all facilities installed. At least one attested copy of such rules and regulations shall be posted at such beaches and any violation thereof shall be punished by a fine of not more than twenty dollars for each offence.

Added by St.1953, c. 576, § 1.

[SCHOOL PHYSICIANS]

§ 13B. Residence quarters for school physicians

A town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting may appropriate for free residence quarters for a school physician a sum not exceeding five hundred dollars.

TAKING, PURCHASE AND ABANDONMENT OF LAND

§ 15. Abandonment of rights in realty; conditions

If any officer of a city or town having charge of any land, easement or right taken for such city or town, otherwise than by purchase, notifies the city council or the selectmen that, in his opinion, such land, easement or right, or part thereof, is no longer required for public purposes, and if thereafter the city council or the inhabitants of the town by a two thirds vote authorize the conveyance of such land, or of part thereof, or the abandonment of such easement or right, or part thereof, and specify the minimum amount to be paid for such conveyance or abandonment, the mayor or the selectmen may, for such amount or a larger amount, and upon such other terms as the mayor or selectmen shall consider proper, convey said land, or part thereof, by deed, or declare said easement or right, or part thereof, to be abandoned. Such declaration, being recorded in the registry of deeds for the district where the land is situated, shall extinguish the easement or right, or part thereof.

No land heretofore or hereafter acquired by eminent domain by one city or town within the limits of another city or town shall be conveyed under this section unless the mayor or selectmen authorized to convey such land offer to convey such land to the city or town wherein such land lies for the minimum amount specified as aforesaid, nor unless such offer is not accepted within six months after notice thereof is given to the mayor or selectmen of the city or town wherein such land lies by the mayor or selectmen authorized to convey, nor unless such conveyance is made within three months after the expiration of said six months. Land so offered to a city or town wherein it lies may be purchased by such city or town whether or not needed for the municipal purposes of such city or town, and, if so purchased and if such land is not needed for municipal purposes, it shall be disposed of as such city or town shall determine.

Amended by St.1958, c. 680; St.1961, c. 117.

§ 15B. Water supply works; sale or exchange of property

A town, city, or district authorized to furnish water for domestic purposes, may, with the advice and approval of the state department of environmental quality engineering, sell at public or private sale, or may exchange any real property, or any easements, whether taken by eminent domain or otherwise, no longer needed for public water supply works under its charge, or may from time to time lease any property not then so needed, or may permit the use thereof by the public for recreational purposes; and may in its discretion, by lease, license or other agreement, permit the construction and maintenance on any land under its control of towers, poles, wires, and other structures for the purpose of transmitting electric power over lands and water held for water supply purposes; provided, that such lease, license or agreement will not, in the opinion of the said department, affect or interfere with the water supply; and provided, further, that said city, town or district may, with the approval of said department, revoke said lease, license or agreement for cause to be determined by it.

No land acquired by eminent domain by a city or town within the limits of another city or town, and no land of a district so acquired, may be sold or exchanged pursuant to this section unless it is offered to be conveyed to the city or town wherein it lies for a minimum amount, specified by vote of the city council or a town or district meeting, for which the city, town or district owning it is willing to sell it, nor unless such offer is not accepted within six months after notice thereof is given to the mayor or selectman of the city or town wherein such land lies, nor unless such conveyance is made within three months after the expiration of such six months.

Added by St.1957, c. 552. Amended by St.1969, c. 555, § 1; St.1975, c. 706, § 89.

STREET SPRINKLING

§ 16. Authorization

A town may sprinkle or spread upon its public ways, or parts thereof, any liquid or material suitable for laying or preventing dust and preserving the surface of such ways or for sanitary purposes, may appropriate money therefor, and determine that with respect to the whole or any part of such ways the whole or any part of such expense shall be assessed upon the estates abutting thereon.

PROVIDING NECESSITIES

§ 19. Authorization; purposes; use of funds

For the purpose of maintaining, distributing and providing at reasonable rates during time of war, public exigency, emergency or distress a sufficient supply of food, other common necessaries of life and temporary shelter for their inhabitants, towns may raise and appropriate money outside of any limit imposed by law upon their tax rate or debt; but any bond, note or certificate of indebtedness issued therefor shall be payable in not more than two years from the date of its issue. The receipts from any undertaking or service authorized by this section shall not be applied to municipal purposes, other than those herein described, so long as there are any obligations outstanding issued on account of any such undertaking or service. The expenditure of all money so appropriated shall be under the direction of the mayor, or of an officer appointed by the mayor, with the approval of the city council in cities other than Boston, and in towns shall be under the direction of the selectmen or of an officer appointed by them.

§ 20. Selling price of necessities; accounting

Articles furnished or services rendered under the preceding section shall be charged for, so far as practicable, at rates calculated to cover all costs and charges connected with the particular undertaking or service, and shall be paid for in cash at the time of delivery or performance. Any town acting under said section shall keep accounts, in the form prescribed by the director of accounts, covering separately, so far as practicable, the cost of the particular undertaking or service in respect to each commodity included therein; and a report in detail of receipts and expenditures connected with such undertaking or service shall be included in the annual report of the town treasurer.

ORDINANCES, BY-LAWS AND REGULATIONS

§ 21. By-laws of towns; purposes

Towns may, for the purposes hereinafter named, make such ordinances and by-laws, not repugnant to law, as they may judge most conducive to their welfare, which shall be binding upon all inhabitants thereof and all persons within their limits. They may, except as herein provided, affix penalties for breaches thereof, not exceeding two hundred dollars for each offense, which shall enure to the town or to such uses as it may direct. Notwithstanding the provisions of any special law to the contrary, fines shall be recovered by indictment or on complaint before a district court, or by noncriminal disposition in accordance with section twenty-one D.

(1) For directing and managing their prudential affairs, preserving peace and good order, and maintaining their internal police.

(2) For preventing the fall of snow and ice from roofs and securing the removal thereof in such portions of their limits and to such extent as they deem expedient. The penalty for violation of such by-laws shall apply to the owner of such building or to his agent having the care thereof.

(3) For providing for the removal of snow and ice from the sidewalks, within the limits of the public ways therein to such extent as they deem expedient. The penalty for the violation of such by-laws shall apply to the owner of abutting property or his agent having charge thereof.

(4) For requiring owners of buildings near the line of public ways to erect barriers, or to take other suitable measures to prevent the fall of snow and ice therefrom upon persons traveling on such ways, and to protect such persons from other dangers incident to the maintenance, occupation or use thereof.

(5) For declaring any sewer or drain laid in any land or way, public or private, opened or proposed to be opened for public travel, to be a common sewer, and that it shall not be laid or connected with any existing common sewer except by the board or officers authorized to lay and maintain common sewers.

(6) For regulating, under a penalty not exceeding fifty dollars for each offence, the use of the common sewers and the connections which may be made therewith.

(7) For regulating throughout the town or within a limited portion thereof, by any designated board or commission, the inspection, materials, construction, alteration or use of pipes and fixtures through which water is supplied by public water works; and to prohibit the use of such water by persons neglecting or refusing to comply with such by-laws.

(8) For regulating, under a penalty not exceeding fifty dollars for each offence, the use of reservoirs connected with its water supply and land and driveways appurtenant thereto.

(9) For regulating the width of tires of vehicles owned in such town and used on the highways thereof.

(10) For requiring and regulating the numbering of buildings on or near the line of public or private ways and prescribing by whom and the method in which it shall be done.

(11) For regulating the disposal by town boards, officers or departments of personal property belonging to the town.

(12) For regulating the making of annual reports by boards, officers or departments not required by law to make such reports.

(13) For requiring all town officers to pay all fees received by them by virtue of their office into the town treasury, or to report the amount thereof from time to time to the selectmen, who shall publish the same in the annual town report.

(14) For prohibiting or regulating the leaving of vehicles unattended within the limits of private ways furnishing means of access for fire apparatus to any building.

(15) For regulating the use, occupation and maintenance, by clubs or associations, whether or not incorporated, of dwelling houses used in common by any or all of their members. In addition to any other remedy provided by law for violation of any ordinance or by-law made under authority of this paragraph, the superior court shall have jurisdiction in equity to restrain any such violation.

(16) For authorizing the superintendent of streets or other officer having charge of ways, for the purpose of removing or plowing snow, or removing ice, from any way, to remove, or cause to be removed, to some convenient place, including in such term a public garage, any vehicle interfering with such work, and for imposing liability for the cost of such removal, and of the storage charges, if any, resulting therefrom, upon the owner of such vehicle.

(16A) For authorizing the board or officer having charge of the collection of garbage and refuse, for the purpose of facilitating such collection, to remove, or cause to be removed, to some convenient place in the city or town, including in such term a public garage, from any portion of a public way therein or from any private way therein open to public use any vehicle parked contrary to a sign within one hundred feet banning parking at such time and place, and for imposing liability for the cost of such removal, and of the storage charges, if any, resulting therefrom, upon the owner of such vehicle.

(16B) For designating areas upon public streets to be used as bicycle lanes and for establishing a noncriminal ticketing procedure against violations of bicycle laws, and a schedule of fines for breaches thereof, not to exceed twenty dollars for each offense.

(17) For prohibiting or regulating the removal of soil, loam, sand or gravel from land not in public use in the whole or in specified districts of the town, and for requiring the erection of a fence or barrier around such area and the finished grading of the same. The penalty for violation of any ordinance or by-law made hereunder shall be as follows: for the first offence, fifty dollars; for the second offence, one hundred dollars; and for each subsequent offence, two hundred dollars. Any order or by-law prohibiting such removal hereunder shall not apply to any soil, loam, sand or gravel which is the subject of a permit or license issued under the authority of the town or by the appropriate licensing board of such town or by the board of appeal, or which is to be removed in compliance with the requirements of a subdivision plan approved by the town planning board.

(18) For regulating the inspection, materials, construction, installation, alteration or use of pipes, fittings and fixtures through which gas is supplied within buildings and other structures.

(19) For requiring any person excavating land or any person in charge of such excavation and for requiring any owner of land which has been excavated to erect barriers or take other suitable measures within two days after such person has been notified in writing by the mayor or city manager and the city council, the selectmen or the building inspector, of the city or town in which the land is located that in their opinion such excavation constitutes a hazard to public safety. The penalty for violation of any ordinance or by-law made hereunder shall not exceed two hundred dollars per day for every day such person is in violation of such notice commencing with the fourth day thereof. The superior court shall have jurisdiction in equity to compel compliance with any ordinance or by-law made under the provisions of this clause. Notwithstanding the foregoing, no person shall be found guilty of a violation of such an ordinance or by-law, nor shall a person be compelled in equity to comply therewith unless, in the opinion of the court, such excavation constitutes a hazard.

(20) For requiring owners of land whereon is located an abandoned well or a well in use, to either provide a covering for such well capable of sustaining a weight of three hundred pounds or to fill same to the level of the ground. The penalty for violation of any ordinance or by-law made hereunder shall be a fine of not less than one hundred dollars nor more than five hundred dollars.

(21) For prohibiting or regulating the parking of any motor vehicle in front of any dwelling house except by the occupants of said dwelling house, provided that notice of said prohibition or regulation is given by the use of portable or permanent signs.

(22) For controlling and abating noise from whatever source, including, without limiting the generality of the foregoing, the right to restrict or limit the use of automobile horns and the operation of motor vehicles in such a manner as to cause excessive noise.

Amended by St.1941, c. 346, § 1; St.1949, c. 98; St.1951, c. 352; St.1952, c. 594; St.1953, c. 319, § 8; St.1953, c. 402; St.1954, c. 213; St.1955, c. 24; St.1956, c. 509; St.1957, c. 436; St.1959, c. 220; St.1961, c. 383; St.1965, c. 316; St.1967, c. 870; St.1969, c. 383; St.1970, c. 470; St.1971, c. 83; St.1973, c. 317; St.1973, c. 806, § 1; St.1974, c. 424, § 1; St.1975, c. 107; St.1977, c. 401, § 1.

§ 24. Powers of cities; regulation of the quality of ice; penalty for violation

A city may make ordinances to secure the inspection of ice sold therein and to prevent the sale of impure ice, and affix penalties of not more than twenty dollars for each violation thereof.

PUBLIC WATER SUPPLY

§ 38. Purchase, development and use

A city, by two thirds vote of its city council, ratified by a majority of the voters thereof at an election called for the purpose, or a town, by action of its selectmen, ratified by a majority of its voters present and voting thereon at a town meeting at which the voting list shall be used, may, for the purpose of supplying water to itself and its inhabitants, purchase of any municipal or other corporation the right to take water from its sources of supply or from its pipes; or may purchase its whole water rights, estates, franchises and privileges, and thereby become entitled to all its rights and privileges and subject to all its duties and liabilities; or, by its board of water commissioners or officers performing like duties, may contract with any such corporation for a supply of water. Any municipal corporation, by its water department, may make such a sale or enter into such a contract to supply water to a city or town.

A city or town having a water supply or water distributing system may develop and use any source of water supply within its limits, not already appropriated for purposes of public water supply, and for such purpose may proceed under any laws applicable to such system as though the authority granted hereby had been contained in such laws; provided, that no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be taken or used without first obtaining the advice and approval of the department of environmental quality engineering.

Nothing in this section shall be construed as authorizing any city or town, any part of which is within ten miles of the state house, or any water company owning a water supply system in any such city or town, except in case of emergency, to use, for domestic purposes, water in contravention of any provision of chapter ninety-two, and no such city, town or water company shall purchase water, except in case of emergency, from any municipality without written permission so to do by the metropolitan district commission.

Amended by St.1938, c. 172, § 2; St.1941, c. 465, § 1; St.1975, c. 706, § 90.

§ 39. Conveying water through another town; liability for damages

If the water is conveyed through another town, pipes may be laid through any public ways therein which the board of aldermen or selectmen thereof may designate; and the town laying such pipes shall be liable for damages caused thereby.

§ 39A. Water supply or distributing system; establishment; maintenance and operation; exception

A town, by a majority of its voters present and voting thereon at a town meeting at which the voting list shall be used, may establish a water supply or water distributing system and maintain and operate the same, in accordance with sections thirty-nine B to thirty-nine G, inclusive; but no such system shall be established to supply water in any town while the inhabitants of any part thereof are being served directly by a water company or a water supply district, water district, or fire district supplying water to its inhabitants, except in accordance with section thirty-eight or with special law. Any town may vote to authorize its board of selectmen to act as water commissioners, with all the powers and duties of such commissioners, until water commissioners shall be elected as hereinafter provided. A town which has so voted may, at an annual town meeting, or at a special town meeting called for the purpose and held at least thirty days before the next annual town meeting, vote that at such next annual town meeting water commissioners shall be elected.

Added by St.1938, c. 172, § 3. Amended by St.1941, c. 465, § 2.

§ 39B. Acquisition of land and waters; conditions

For the purpose of establishing a water supply or water distributing system as authorized by section thirty-nine A, any town, by its board of water commissioners or selectmen authorized to act as such, may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, the waters, or any portion thereof, of any pond, brook, spring, stream or ground water sources within its limits, not already appropriated for purposes of public water supply, and any water or flowage rights connected therewith; and also for said purpose may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, all lands, rights of way and other easements necessary for collecting, storing, holding, purifying and treating such water and protecting and preserving the purity thereof and for conveying the same to any part of the town; provided, that no source of water supply and no lands necessary for protecting and preserving the purity of the water shall be taken or used without first obtaining the advice and approval of the department of environmental quality engineering, and that the location and arrangement of all dams, reservoirs, wells or filter galleries, filtration and pumping plants or other works necessary in carrying out the provisions of sections thirty-nine A to thirty-nine E, inclusive, shall be subject to the approval of said department.

Added by St.1938, c. 172, § 3. Amended by St.1975, c. 706, § 91.

§ 39C. Construction and maintenance of dams, wells, reservoirs and other buildings; conditions

A town may construct and maintain on the lands acquired and held by it under section thirty-nine B proper dams, wells, reservoirs, pumping and filtration plants, buildings, standpipes, tanks, fixtures and other structures, including also purification and treatment works, the construction and maintenance of which shall be subject to the approval of the department of environmental quality engineering, and may make excavations, procure and operate machinery, and provide such other means and appliances and do such other things as may be necessary for the establishment and maintenance of complete and effective water works; and for that purpose may construct, lay and maintain aqueducts, conduits, pipes and other works, under or over any lands, water courses, railroads, railways and public or other ways, and along any such way in said town in such manner as not unnecessarily to obstruct the same; and for the purposes of constructing, laying, maintaining, operating and repairing such conduits, pipes and other works, and for all other proper purposes of sections thirty-nine A to thirty-nine E, inclusive, a town may dig up or raise and embank any such lands, highways or other ways in such manner as to cause the least hindrance to public travel thereon; and provided, that all things done upon any such way shall be subject to the direction of the selectmen of the town or, in the case of a state highway, of the state department of public works; and provided, further, that no such town shall enter upon, or construct or lay any conduits, pipes or other works within, the location of any railroad corporation except at such time and in such manner as it may agree upon with such corporation or, in case of failure so to agree, as may be approved by the department of public utilities.

Added by St.1938, c. 172, § 3. Amended by St.1975, c. 706, § 92.

§ 39D. Surveys

Such a town may enter upon any lands for the purpose of making surveys, test pits and borings, and may take or otherwise acquire the right to occupy temporarily any lands necessary for the construction of any work or for any other purpose authorized by said sections thirty-nine A to thirty-nine E, inclusive.

Added by St.1938, c. 172, § 3.

§ 39E. Management of water system

The land, water rights and other property taken or acquired under section thirty-nine B, and all works, buildings and other structures erected or constructed under sections thirty-nine C and thirty-nine D, shall be managed, improved and controlled by a board of water commissioners to be elected as provided by section sixty-nine A of chapter forty-one, or by its selectmen authorized to act as such, in such manner as they shall deem for the best interests of the town.

Added by St.1938, c. 172, § 3.

§ 39F. Damages

Any person or corporation injured in his or its property by any action of a town under said sections thirty-nine A to thirty-nine E, inclusive, may recover damages from said town under chapter seventy-nine.

Added by St.1938, c. 172, § 3.

§ 39G. Pollution of water; damage to property; penalties

Whoever wilfully or wantonly corrupts, pollutes or diverts any of the waters taken or held under said sections thirty-nine A to thirty-nine E, inclusive, or injures any structure, work or other property owned, held or used by a town under the authority and for the purposes of said sections, shall forfeit and pay to said town three times the amount of damages assessed therefor, to be recovered in an action of tort; and upon conviction of any one of the above wilful or wanton acts shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both.

Added by St.1938, c. 172, § 3.

§ 39H. Right to aid other governmental units; compensation

A city, town or district through its water department, if any, if thereunto authorized by ordinance or by-law, or by by-law or by vote of its governing body if a district, or a water company, as defined in section one of chapter one hundred and sixty-five, may go to aid any other city, town or district or any other water company, as so defined, in repairing and maintaining the physical properties of its water supply system. Any such ordinance, by-law or vote may authorize the head of the water department to extend such aid, subject to such conditions and restrictions as may be prescribed therein. Members of water departments of cities, towns and districts while in the performance of their duties in extending such aid shall have the same immunities and privileges as if performing the same work in their respective cities, towns and districts. Any city, town, district or water company aided under this section shall compensate any city, town, district or water company rendering aid as aforesaid, for such aid and for the whole or any part of any damage to its property sustained in the course of rendering such aid.

Added by St.1943, c. 125.

§ 39*l*. Water meters; testing

Any person using water supplied by a city, town or district, measured by a meter, shall be entitled to an examination and test of such meter to determine the accuracy of the same in any quarter or period, upon written application therefor, which shall be made before the expiration of the time when the rate for such quarter or period is required to be paid, to the board, commissioner or officer in charge of the water works of the city, town or district. Such examination and test shall be made by a competent person employed by the city, town or district. A written report of the result of the examination and test shall be furnished to the person making the application, and if it appears that the meter has registered with substantial accuracy, the expense of the examination and test shall be paid by the person applying therefor, and in no case shall the expense so required to be paid exceed three dollars for each examination and test, but if it appears that the meter has not registered within two per cent of accuracy and that the person has been charged with, or has paid for, more water than he should have been charged with or should have paid for, the amount of such excess shall forthwith be credited to such person or remitted to him if he has paid the same, and the expense of the examination and test shall be borne by the city, town or district supplying the water; if, however, it appears that the person has been charged with, or has paid for, less water than he should have been charged with or should have paid for, he shall forthwith be charged with the proper additional amount and shall pay the same, together with the expense of the examination and test, to the city, town or district supplying the water.

Added by St.1958, c. 527, § 1.

§ 40. Emergency water supply; conditions

The metropolitan district commission in cities or towns using the metropolitan water supply, the city council in other cities, the selectmen or water commissioners in other towns, water commissioners of water supply and fire and water districts, officers having control of county institutions having water works, heads of state departments having control of state institutions having water works, hereinafter described as officers having control of such an institution, and water companies supplying any communities in the commonwealth, in cases of emergency, may, on behalf of their respective bodies politic or corporate, take by eminent domain under chapter seventy-nine the right to draw water from any stream, pond or reservoir or from ground sources of supply by means of driven, artesian or other wells not already appropriated to uses of a municipal or other public water supply, or may purchase water from the metropolitan district commission, subject to the provisions of chapter ninety-two, any other water supply district, fire and water district or any city ,town or water company, or county or state institution having water works, for a period of not more than six months in any year in quantities necessary to relieve the emergency; but no such taking or purchase shall be made until after the department of environmental quality engineering has approved the water as a proper source of water supply and unless and until, in the case of towns and water supply and fire and water districts, the selectmen or water commissioners have first been authorized so to take or purchase by a vote of the voters at a town meeting or a district meeting, as the case may be, or, in the case of water companies, said companies have first been authorized in writing by said department, and unless and until notice of such taking, including a copy of plans and specifications, has been given to the city council or to the board of selectmen, as the case may be, by certified mail at least ten days prior thereto. The proper authority as aforesaid may also take by eminent domain under said chapter seventy-nine the right to use any land for the time necessary to use such water; provided, that, in the case of such a taking by a water company, said department shall first prescribe the limits within which such rights shall be taken. The vote of a city council or of the voters of a town or of a water supply or fire and water district or the action of county or state officers as aforesaid or of the metropolitan district commission or the written authorization of said department of environmental quality engineering to a water company to make or authorize such taking or purchase as aforesaid shall be conclusive evidence of the existence of the emergency. The metropolitan district commission, subject to the provisions of chapter ninety-two, any other water supply district or fire and water district and any city, town or water company or the aforesaid officers having control of any county or state institution having water works may, for a period of not more than six months in any year, sell to the metropolitan district commission, to any city, town, water supply or fire and water district, or water company, or to any county or state institution having water works, such quantities of water as may be available at the time, and the approval of said department of environmental quality engineering shall be conclusive evidence that such quantities are safely available for sale. In such emergencies the said parties interested may agree to install for the purpose temporary pipes and other works in any city or town; provided, that the installation or repair of such pipes or other works in or along any highway shall be done with the least possible hindrance to public travel, and shall be subject to the direction and approval of the officers or departments having charge of the maintenance of said highways.

Amended by St.1933, c. 314; St.1945, c. 606; St.1966, c. 331; St.1975, c. 706, § 93.

§ 41. Protection of water supply; conditions

Towns and water supply and fire districts duly established by law may, with the consent and approval of the department of environmental quality engineering, given after due notice and a hearing, take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, and hold, lands, buildings, rights of way and easements within the watershed of any pond, stream, reservoir, well or other water used by them as a source of water supply, which said department may deem necessary to protect and preserve the purity of the water supply. All lands taken, purchased or otherwise acquired under this section shall be under the control of the board of water commissioners of the town or district acquiring the same, who shall manage and improve them in such manner as they shall deem for the best interest of the town or district. All damages to be paid by a town or district by reason of any act done under authority hereof may be paid out of the proceeds of the sale of any bonds authorized by law to be issued by such town or district for water supply purposes or from any surplus income of the water works available therefor. A town may also make a contract to contribute to the cost of building, by any other town situated in the watershed of its water supply, a sewer or system of sewers to aid in protecting such water supply from pollution.

Amended by St.1975, c. 706, § 94.

§ 41A. Use of water in emergencies

A board of water commissioners or a board of public works with the duties of water commissioners of a municipality, water supply, fire and water district or water company having control of water supplies may, on behalf of their respective bodies politic or corporate, upon notification to the water takers, restrain the use of water on public and private premises by shutting off the water at the meter or at the curb cock or by other means as the case may be, during a drought, hurricane, conflagration or other disaster when in the opinion of the department of environmental quality engineering an emergency exists.

Added by St.1949, c. 793. Amended by St.1975, c. 706, § 95.

§ 42. Laying pipes and conduits

The board of aldermen or the selectmen may, upon terms and conditions prescribed by them, authorize the laying of pipes and conduits for the conveyance of water under any public way in their town; provided, that this section shall not authorize any person to supply water to any other person in any town where municipal water works are established except with the consent of the board or authority having charge of such water works therein.

HOT WATER AND STEAM

§ 43. Authorization for transmission

The board of aldermen or the selectmen may, upon terms and conditions prescribed by them, authorize the laying of pipes and conduits for the transmission of steam or hot water for heating, cooking and mechanical power, for private use, under any public way in their town, may regulate and control the same, may at any time require the persons using such pipes and conduits to make alterations in the location or construction thereof, and may, after notice and hearing, order the removal thereof. Any use of such pipes and conduits other than herein authorized shall terminate the authority to maintain the same. Sections twelve, thirteen and fourteen of chapter one hundred and fifty-eight shall apply to proceedings hereunder so far as applicable.

REGIONAL REFUSE DISPOSAL DISTRICTS

§ 44A. Regional refuse disposal planning committee

A city or town, by vote of the council in the case of a city and by vote of a town meeting in the case of a town, may create a special unpaid committee to be known as a regional refuse disposal planning committee consisting of three persons to be appointed by the moderator in a town and by the mayor in a city.

Added by St.1965, c. 748, § 1, as amended St.1967, c. 149.

§ 44B. Regional refuse disposal planning board; study of creation of district; expenses of board; refuse disposal facility defined

Regional refuse disposal planning committees from any two or more contiguous cities or towns may join together to form a regional refuse disposal planning board. Such regional refuse disposal planning board shall study the advisability of establishing a regional refuse disposal district, its organization, operation and control, and of selecting, constructing, maintaining and operating a refuse disposal facility to serve the needs of the district, and shall estimate construction and operating costs and study methods of financing such district. Each city or town comprising such board may appropriate a sum not in excess of ten thousand dollars for the purpose of meeting the expenses of the board. Such board may expend any such sums so appropriated and may employ such expert assistance as it deems necessary. Such board may apply for, accept and expend, without appropriation, grants or gifts of funds from the federal government. As used in this section and in sections forty-four C to forty-four K, inclusive, the term "refuse disposal facility" shall mean an incinerator, sanitary land fill, transfer station, composting plant, other sanitary means of refuse disposal approved by the department of environmental quality engineering or any combination of two or more of such facilities.

Added by St.1965, c. 748, § 1. Amended by St.1967, c. 149; St.1969, c. 199; St.1975, c. 706, § 96.

§ 44C. Regional refuse disposal planning board; agreement for establishment of district

The regional refuse disposal planning board, consisting only of the regional refuse disposal planning committees which vote in favor of the establishment of a regional refuse disposal district, shall draw up a proposed agreement. The said agreement shall contain provisions describing the sharing of construction and operating costs, the number, method of selection and terms of office of the members of the regional refuse disposal district committee, the general area in which the refuse disposal facility shall be constructed, the terms by which another city or town may be admitted to the district, the method by which the agreement may be amended, the procedure for the preparation and adoption of the annual budget and any other matters, not incompatible with law, which the said board may deem advisable; provided, however, that all plans for refuse disposal facilities shall be subject to the approval of the state department of environmental quality engineering.

Added by St.1965, c. 748, § 1. Amended by St.1975, c. 706, § 97.

§ 44D. Report of board

The regional refuse disposal planning board shall report its findings and recommendations to the board of selectmen and the mayor, as the case may be, of each city or town comprising the board. If the board recommends that a regional refuse disposal district be established, a copy of the proposed agreement shall accompany the report to each such city or town.

Added by St.1965, c. 748, § 1.

§ 44E. Acceptance of recommendation; election; establishment of district

The selectmen of each of the several towns, upon receipt of a recommendation that a regional refuse disposal district be established, shall cause the question of accepting such plan to be presented for determination by vote with printed ballots at the next annual town meeting or at a special town meeting called for the purpose. The mayors of the several cities, upon receipt of a recommendation that a regional refuse disposal district be established, shall submit the question of accepting such plan to the city council within sixty days after receipt of the recommendation. In the case of either a town or a city, the question to be voted on shall be:—"Shall the city (town) accept the provisions of sections 44A to 44K, inclusive, of chapter 40 of the General Laws providing for the establishment of a regional refuse district, together with the towns of ________ and the cities of ________, and the construction, maintenance and operation of a regional refuse disposal facility by said district in accordance with the provisions of a proposed agreement filed with the selectmen or the mayor?"

If a majority of the members of each city council voting on the question and a majority of the voters in each town voting on the question shall vote in the affirmative, the proposed regional refuse disposal district shall be deemed to be established forthwith in accordance with the terms of the proposed agreement.

Added by St.1965, c. 748, § 1.

§ 44F. General powers of district

A regional refuse disposal district, established under the provisions of section forty-four E, shall be a body politic and corporate with the following powers and duties:—

(*a*) To adopt a name and a corporate seal, and the engraved or printed facsimile of such seal appearing on a bond or note of the district shall have the same legal effect as such seal would have if it were impressed thereon.

(*b*) To sue and be sued, but only to the same extent and upon the same conditions that a city or town may be sued.

(*c*) To purchase, or take by eminent domain under chapter seventy-nine land within the cities and towns which have accepted the provisions of sections forty-four A to forty-four K, inclusive, for the purposes of the district, and to construct and originally equip a refuse disposal facility for the benefit of said cities and towns, and to make any necessary contracts in relation thereto.

(*d*) To incur debt for the purpose of acquiring land and constructing, and originally equipping a refuse disposal facility for a term not exceeding twenty years; provided, however, that any indebtedness so incurred shall not exceed an amount approved by the emergency finance board; and provided, further, that written notice of the amount of the debt and of the general purposes for which it was authorized shall be given to the city council of each city, and to the board of selectmen of each town, comprising the district not later than seven days after the date on which said debt was authorized by the district committee; and no debt may be incurred until the expiration of thirty days from the date said debt was authorized by the district committee. If, prior to the expiration of said period, the city council of any member city expresses disapproval of the amount authorized by the district committee, or any member town expresses such disapproval by vote of a majority of the voters present and voting on the matter at a town meeting called for the purpose of expressing such disapproval, the said debt shall not be incurred and the regional refuse disposal planning committee shall thereupon prepare another proposal which may be the same as any prior proposal and an authorization to incur debt therefor.

(*e*) To issue bonds and notes in the name and upon the full faith and credit of said district; said bonds or notes shall be signed by the chairman and the treasurer of the district committee, except that said chairman by a writing bearing his written signature and filed in the office of said treasurer, which writing shall be open to public inspection, may authorize said treasurer to cause to be engraved or printed on said bonds or notes a facsimile of said chairman's signature, and such facsimile signature so engraved or printed shall have the same validity and effect as said chairman's written signature, and each issue of bonds or notes shall be a separate loan.

(*f*) To receive and disburse funds for any district purpose.

(*g*) To incur temporary debt in anticipation of revenue to be received from member cities and towns.

(*h*) To assess member cities and towns for any expenses of the district.

(*i*) To receive any grants or gifts for the purposes of the regional district.

(*j*) To engage legal counsel.

(*k*) To submit an annual report to each of the member cities and towns, containing a detailed financial statement, and a statement showing the method by which the annual charges assessed against each city and town were computed.

(*l*) To employ an executive director and such other employees as it deems necessary to operate such district.

(*m*) To adopt an annual operating budget, not later than December first.

(*n*) To enter into contracts for refuse disposal with non-member cities and towns as well as other bodies politic, the United States of America and other persons.

Added by St.1965, c. 748, § 1.

§ 44G. Exercise of powers; officers of committee

The powers, duties and liabilities of a regional refuse disposal district shall be vested in and exercised by a regional refuse disposal district committee organized in accordance with the agreement. The committee shall choose a chairman by ballot from its membership. It shall appoint a secretary and a treasurer, who may be the same person, but who need not be members of said committee. The treasurer shall receive and take charge of all money belonging to the district and shall pay any bill of the district which shall have been approved by the committee. The treasurer may, by vote of said committee, be compensated for his services. The treasurer of said district shall be subject to the provisions of sections thirty-five, fifty-two and one hundred and nine A of chapter forty-one, to the extent applicable.

Added by St.1965, c. 748, § 1.

§ 44H. Maintenance and operating expenses; debts; determination and apportionment

The regional refuse disposal district committee shall annually determine the amounts necessary to be raised to maintain and operate the district during the ensuing fiscal year, and the amounts required for payment of debt and interest incurred by the district which will be due in the said year, and shall apportion the amount so determined among the several member cities and towns in accordance with the terms of the agreement. The amounts so apportioned for each city or town shall, prior to December thirty-first in each year, be certified by the regional district treasurer to the treasurers of the several cities and towns. The obligation of each member city or town to pay apportionments pursuant to the agreement shall be included in the amounts to be assessed annually in such city or town under section twenty-three of chapter fifty-nine without appropriation and the city or town treasurer shall pay to the district the amounts so apportioned at the times specified in the agreement. The amounts apportioned or to be apportioned pursuant to the agreement shall not be included in the statutory limit of indebtedness of any city or town.

Added by St.1965, c. 748, § 1. Amended by St.1969, c. 849, § 34.

§ 44*I*. Annual audit and report; costs

The director of accounts in the department of corporations and taxation shall annually cause an audit to be made of the accounts of the regional refuse disposal district committee, and for this purpose he, and his duly accredited agents, shall have access to all necessary papers, books and records. Upon the completion of each audit, a report thereon shall be made to the chairman of said district committee, and a copy thereof shall be sent to the mayor and to the chairman of the board of selectmen, respectively, of each city and town which is a member of said district. The director shall apportion the cost among the several cities and towns which are members of the district on the basis provided by section forty-four C, and submit the amounts of each apportionment to the state treasurer, who shall issue his warrant requiring the assessors of the cities and towns which are members of the district to assess a tax to the amount of the expense, and such amounts shall be collected and paid to the state treasurer, as provided by section twenty of chapter fifty-nine.

Added by St.1965, c. 748, § 1.

§ 44J. Sale, lease or license of lands or facilities to refuse disposal districts

The agreement made under section forty-four C, or any amendment to such an agreement, may contain provisions authorizing any member city or town to sell, lease or license to the regional refuse disposal district any refuse disposal facility and any land appurtenant thereto or used in connection therewith or any other property useful for the purposes of the district, and any such city or town may authorize such sale, lease or license accordingly, notwithstanding the provisions of section three of chapter forty or any other provisions of law to the contrary. In case of a sale, the price and time or times of payment and the method by which the cities and towns other than the selling city or town shall be assessed for such payment shall be set forth in the agreement or amendment; but in no case shall payments be made which shall extend over a period in excess of twenty years. In the case of a lease or license, the rental or license fee and terms of payment and assessment shall be set forth in the agreement or amendment. The lease or license may be for a term not in excess of twenty years, and may contain provisions for the extension of the lease or license for an additional term not in excess of twenty years at the option of the regional refuse disposal district committee.

Added by St.1965, c. 748, § 1.

§ 44K. Bonds and notes; applicable provisions

The provisions af sections sixteen to twenty-eight, inclusive, of chapter forty-four shall, so far as apt, apply to regional refuse disposal districts, but the provisions of section sixteen relating to the countersigning of bonds and notes and the provisions of section twenty-four relating to the countersigning and approval of notes and the certificates of the clerk relating thereto shall not apply to such districts.

Added by St.1965, c. 748, § 1.

RESTRICTIONS ON ISSUANCE OF BUILDING PERMITS

§ 54. Availability of water supply

No building permit shall be issued for the construction of a building which would necessitate the use of water therein, unless a supply of water is available therefor either from a water system operated by a city, town or district, or from a well located on the land where the building is to be constructed, or from a water corporation or company, as defined in section one of chapter one hundred and sixty-five.

Added by St.1965, c. 385, § 1.

ANNUITY CONTRACTS FOR HOSPITAL EMPLOYEES

§ 55. Annuity contracts for hospital employees; authorization; requisites

Any city through an officer designated by the city council or any town through an officer designated by the selectmen which operates a hospital may enter into a written agreement with such hospital employees to purchase an individual or group annuity contract for such employee; provided, however, that in no event shall the total of the premiums paid for the purchase of such annuity and the employee's includible compensation for any year exceed the total annual salary or compensation under the existing salary schedule or classification plan applicable to such employee in such year. As used in this section, the words "includible compensation" shall have the same meaning as in section 403(b) of the Internal Revenue Code of 1954, as amended. Such employee's rights under such annuity contract shall be nonforfeitable. Such contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth; provided, however, that such city or town may agree with any such employee or prospective employee who has an annuity contract in force for at least ninety days prior to the effective date of such agreement to continue to make premium payments under such contract subsequent to the effective date of such agreement, without regard to whether or not such contract has been issued by an insurer authorized to issue such contracts in the commonwealth, but in such case any subsequent contract shall be purchased only from an insurer authorized to issue life insurance or annuity contracts in the commonwealth. Upon execution of such an agreement, the officer of the city or town thereunto authorized shall forthwith give written notice thereof to the treasurer of such city or town and shall certify the amount and dates of premiums payable under the terms of such contract, the name of the insurer and the office to which such premium payments shall be made. Said treasurer shall thereafter make such premium payments while said contract is in force and such employee is actively employed by the city or town and, upon written notice duly given by said officer, shall make any changes in the manner or amount of premium payments required under the terms of any subsequent agreement entered into by such employee and the city or town and shall stop such premium payments when so notified by such officer. Such city or town shall not offer to such employee any annuity plan to the exclusion of any other plan, whether group or individual.

Added by St.1970, c. 337.

CHAPTER 40A

ZONING

Sec.

3. Subjects which zoning may not regulate; exemptions; public hearings; temporary mobile home residences.

6. Existing structures, uses, or permits; certain subdivision plans; application of chapter.

§ 3. Subjects which zoning may not regulate; exemptions; public hearings; temporary mobile home residences

No zoning ordinance or by-law shall regulate or restrict the use of materials or methods of construction of structures regulated by the state building code, nor shall any such ordinance or by-law prohibit, unreasonably regulate or require a special permit for the use of land for the primary purpose of agriculture, horticulture or floriculture, nor shall they prohibit or unreasonably regulate the expansion or reconstruction of existing structures thereon for the primary purpose of agriculture, horticulture or floriculture, except that all such activities may be limited to parcels of more than five acres in areas not zoned for agriculture, horticulture or floriculture. For such purposes land divided by a public or private way or a waterway shall be construed as one parcel. No zoning ordinance or by-law shall exempt land or structures from flood plain or wetlands regulations established pursuant to general law.

No zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building nor shall any such ordinance or by-law prohibit, regulate or restrict the use of land or structures for religious purposes or for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements. Lands or structures used, or to be used by a public service corporation may be exempted in particular respects from the operation of a zoning ordinance or by-law if, upon petition of the corporation, the department of public utilities shall, after notice given pursuant to section eleven and public hearing in the town or city, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public; provided however, that if lands or structures used or to be used by a public service corporation are located in more than one municipality such lands or structures may be exempted in particular respects from the operation of any zoning ordinance or by-law if, upon petition of the corporation, the department of public utilities shall after notice to all affected communities and public hearing in one of said municipalities, determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public.

No provision of a zoning ordinance or by-law shall be valid which sets apart districts by any boundary line which may be changed without adoption of an amendment to the zoning ordinance or by-law.

No zoning ordinance or by-law shall prohibit the owner and occupier of a residence which has been destroyed by fire or other natural holocaust from placing a mobile home on the site of such residence and residing in such home for a period not to exceed twelve months while the residence is being rebuilt. Any such mobile home shall be subject to the provisions of the state sanitary code.

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 860.

§ 6. Existing structures, uses, or permits; certain subdivision plans; application of chapter

Except as hereinafter provided, a zoning ordinance or by-law shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing on such ordinance or by-law required by section five, but shall apply to any change or substantial extension of such use, to a building or special permit issued after the first notice of said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or structural change to a single or two-family residential structure does not increase the nonconforming nature of said structure. Pre-existing nonconforming structures or uses may be extended or altered, provided, that no such extension or alteration shall be permitted unless there is a finding by the permit granting authority or by the special permit granting authority designated by ordinance or by-law that such change, extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. This section shall not apply to billboards, signs and other advertising devices subject to the provisions of sections twenty-nine through thirty-three, inclusive, of chapter ninety-three, and to chapter ninety-three D.

A zoning ordinance or by-law shall provide that construction or operations under a building or special permit shall conform to any subsequent amendment of the ordinance or by-law unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

A zoning ordinance or by-law may define and regulate nonconforming uses and structures abandoned or not used for a period of two years or more.

Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage. Any increase in area, frontage, width, yard or depth requirement of a zoning ordinance or by-law shall not apply for a period of five years from its effective date or for five years after January first, nineteen hundred and seventy-six, whichever is later, to a lot for single and two family residential use, provided the plan for such lot was recorded or endorsed and such lot was held in common ownership with any adjoining land and conformed to the existing zoning requirements as of January first, nineteen hundred and seventy-six, and had less area, frontage, width, yard or depth requirements than the newly effective zoning requirements but contained at least seven thousand five hundred square feet of area and seventy-five feet of frontage, and provided that said five year period does not commence prior to January first, nineteen hundred and seventy-six, and provided further that the provisions of this sentence shall not apply to more than three of such adjoining lots held in common ownership. The provisions of this paragraph shall not be construed to prohibit a lot being built upon, if at the time of the building, building upon such lot is not prohibited by the zoning ordinances or by-laws in effect in a city or town.

If a definitive plan, or a preliminary plan followed within seven months by a definitive plan, is submitted to a planning board for approval under the subdivision control law, and written notice of such submission has been given to the city or town clerk before the effective date of ordinance or by-law, the land shown on such plan shall be governed by the applicable provisions of the zoning ordinance or by-law, if any, in effect at the time of the first such submission while such plan or plans are being processed under the subdivision control law, and, if such definitive plan or an amendment thereof is finally approved, for five years from the date of the endorsement of such approval, except in the case where such plan was submitted or submitted and approved before January first, nineteen hundred and seventy-six, for seven years from the date of the endorsement of such approval.

When a plan referred to section eighty-one P of chapter forty-one has been submitted to a planning board and written notice of such submission has been given to the city or town clerk, the use of the land shown on such plan shall be governed by applicable provisions of the zoning ordinance or by-law in effect at the time of the submission of such plan while such plan is being processed under the subdivision control law including the time required to pursue or await the determination of an appeal referred to in said section, and for a period of three years from the date of endorsement by the planning board that approval under the subdivision control law is not required, or words of similar import.

Disapproval of a plan shall not serve to terminate any rights which shall have accrued under the provisions of this section, provided an appeal from the decision disapproving said plan is made under applicable provisions of the subdivision control law. Such appeal shall stay, pending an order or decree of a court of final jurisdiction, the applicability to land shown on said plan of the provisions of any zoning ordinance or by-law which became effective after the date of submission of the plan first submitted.

In the event that any lot shown on a plan endorsed by the planning board is the subject matter of any appeal or any litigation, the exemptive provisions of this section shall be extended for a period equal to that from the date of filing of said appeal or the commencement of litigation, whichever is earlier, to the date of final disposition thereof, provided final adjudication is in favor of the owner of said lot.

The record owner of the land shall have the right, at any time, by an instrument duly recorded in the registry of deeds for the district in which the land lies, to waive the provisions of this section, in which case the ordinance or by-law then or thereafter in effect shall apply. The submission of an amended plan or of a further subdivision of all or part of the land shall not constitute such a waiver, nor shall it have the effect of further extending the applicability of the ordinance or by-law that was extended by the original submission, but, if accompanied by the waiver described above, shall have the effect of extending, but only to extent aforesaid, the ordinance or by-law made then applicable by such waiver.

Added by St.1975, c. 808, § 3. Amended by St.1977, c. 829, § 3D; St.1979, c. 106.

CHAPTER 40B

REGIONAL PLANNING

LOW AND MODERATE INCOME HOUSING

Sec.
21. Low or moderate income housing; applications for approval of proposed construction; hearing; appeal.

LOW AND MODERATE INCOME HOUSING

§ 21. Low or moderate income housing; applications for approval of proposed construction; hearing; appeal

Any public agency or limited dividend or nonprofit organization proposing to build low or moderate income housing may submit to the board of appeals, established under section twelve of chapter forty A, a single application to build such housing in lieu of separate applications to the applicable local boards. The board of appeals shall forthwith notify each such local board, as applicable, of the filing of such application by sending a copy thereof to such local boards for their recommendations and shall, within thirty days of the receipt of such application, hold a public hearing on the same. The board of appeals shall request the appearance at said hearing of such representatives of said local boards as are deemed necessary or helpful in making its decision upon such application and shall have the same power to issue permits or approvals as any local board or official who would otherwise act with respect to such application, including but not limited to the power to attach to said permit or approval conditions and requirements with respect to height, site plan, size or shape, or building materials as are consistent with the terms of this section. The board of appeals, in making its decision on said application, shall take into consideration the recommendations of the local boards and shall have the authority to use the testimony of consultants. The provisions of section eleven of chapter forty A shall apply to all such hearings. The board of appeals shall render a decision, based upon a majority vote of said board, within forty days after the termination of the public hearing and, if favorable to the applicant, shall forthwith issue a comprehensive permit or approval. If said hearing is not convened or a decision is not rendered within the time allowed, unless the time has been extended by mutual agreement between the board and the applicant, the application shall be deemed to have been allowed and the comprehensive permit or approval shall forthwith issue. Any person aggrieved by the issuance of a comprehensive permit or approval may appeal to the court as provided in section seventeen of chapter forty A.

Added by St.1969, c. 774, § 1. Amended by St.1975, c. 808, §§ 4, 4A, 4B.

CHAPTER 40C

HISTORIC DISTRICTS

Sec.
5. Definitions.
6. Certificates of appropriateness, nonapplicability or hardship; necessity; applications and plans, etc.; building and demolition permits restricted.
9. Maintenance and repair, etc.

§ 5. Definitions

As used in this chapter the word "altered" includes the words "rebuilt", "reconstructed", "restored", "removed" and "demolished" and the phrase "changed in exterior color"; the word "building" means a combination of materials forming a shelter for persons, animals or property; the word "commission" means the commission acting as the historic district commission; the word "constructed" includes the words "built", "erected", "installed", "enlarged", and "moved"; the words "exterior architectural feature" mean such portion of the exterior of a building or structure as is open to view from a public street, public way, public park or public body of water, including but not limited to the architectural style and general arrangement and setting thereof, the kind, color and texture of exterior building materials, the color of paint or other materials applied to exterior surfaces and the type and style of windows, doors, lights, signs and other appurtenant exterior fixtures; and the word "structure" means a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

Added by St.1971, c. 359, § 1.

§ 6. Certificates of appropriateness, non-applicability or hardship; necessity; applications and plans, etc.; building and demolition permits restricted

Except as the ordinance or by-law may otherwise provide in accordance with section eight or said section eight or nine, no building or structure within an historic district shall be constructed or altered in any way that affects exterior architectural features unless the commission shall first have issued a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship with respect to such construction or alteration.

Any person who desires to obtain a certificate from the commission shall file with the commission an application for a certificate of appropriateness, a certificate of non-applicability or a certificate of hardship, as the case may be, in such form as the commission may reasonably determine, together with such plans, elevations, specifications, material and other information, including in the case of demolition or removal a statement of the proposed condition and appearance of the property thereafter, as may be reasonably deemed necessary by the commission to enable it to make a determination on the application.

No building permit for construction of a building or structure or for alteration of an exterior architectural feature within an historic district and no demolition permit for demolition or removal of a building or structure within an historic district shall be issued by a city or town or any department thereof until the certificate required by this section has been issued by the commission.

Added by St.1971, c. 359, § 1.

§ 9. Maintenance and repair, etc.

Nothing in this chapter shall be construed to prevent the ordinary maintenance, repair or replacement of any exterior architectural feature within an historic district which does not involve a change in design, material, color or the outward appearance thereof, nor to prevent landscaping with plants, trees or shrubs, nor construed to prevent the meeting of requirements certified by a duly authorized public officer to be necessary for public safety because of an unsafe or dangerous condition, nor construed to prevent any construction or alteration under a permit duly issued prior to the effective date of the applicable historic district ordinance or by-law.

Added by St.1971, c. 359, § 1.

CHAPTER 40D

INDUSTRIAL DEVELOPMENT OF CITIES AND TOWNS

Sec.
21. Solid waste disposal facilities; financing authorities; organization; consolidation and dissolution; bonds; contracts; production and sale of steam as a by-product; applicable laws; government grants or loans.
22. Pollution control facilities; financing; findings; financing authority; applicable laws.
23. Pollution control facilities; grants or loans.

§ 21. Solid waste disposal facilities; financing authorities; organization; consolidation and dissolution; bonds; contracts; production and sale of steam as a by-product; applicable laws; government grants or loans

(*a*) A municipality acting by and through an authority may finance solid waste disposal facilities in the same manner provided by this chapter for industrial development facilities, except as otherwise hereinafter provided.

(*b*) A city or town, acting in the manner specified in section two, may by vote declare that an authority is needed therein for the financing of solid waste disposal facilities under this chapter but shall not be empowered to so finance said solid waste disposal facilities, except as an incident to industrial development facilities, unless such declaration is made. Such vote shall be made separately from a vote declaring that an authority is needed to finance industrial development facilities, except such as constitute or are incidental to said solid waste disposal facilities. Such declarations may be made successively but only one authority shall be organized under this chapter in any city or town except as otherwise provided with respect to consolidated authorities.

(*c*) A certificate of organization issued by the state secretary shall indicate whether the authority has solid waste disposal powers or industrial development powers or both. When a new power is added by city or town action under this chapter, an amended certificate of organization shall be issued accordingly. Certificates of organization so issued by the state secretary shall be conclusive evidence that the authority has solid waste disposal powers or industrial development powers, or both, as set forth therein.

(*d*) A vote to consolidate authorities taken prior to the adoption of this section shall not be deemed to include the function of financing solid waste disposal facilities. A vote taken thereafter to so consolidate may include said function of financing solid waste disposal facilities or industrial development facilities, or both. If said vote does not specify the function or functions, it shall be taken to refer only to the financing of industrial development facilities.

(*e*) Dissolution proceedings in the manner provided for in section two shall apply to authorities having functions relative to solid waste disposal facilities or to industrial development facilities, or both.

(*f*) The requirements of clauses (*e*), (*g*) and (*k*) of subsection (2) of section twelve shall not apply to solid waste disposal facilities projects. It shall be necessary, however, that the state industrial finance board find, after consultation with the departments of natural resources and public works, that a substantial public benefit will result from the project and that the proposed facilities are consistent with state plans for the conservation of the natural resources of the commonwealth and with plans of the department of public works for the construction of such solid waste disposal facilities.

(*g*) All cities, towns and other public agencies and private parties are authorized from time to time to contract with users or operators of solid waste disposal facilities established or to be established under the provisions of this section for the disposal of refuse, garbage and waste or for the purchase or use of by-products or residue resulting from the operation of such facilities. Such contracts may be for such periods as agreed upon by the parties and, without limiting the generality of the foregoing, may include provisions for the delivery of minimum amounts of refuse, garbage and waste and payments for the use of the facilities to be based thereon, unit prices, which may be graduated, and adjustments thereof. Such payments, unit prices or adjustments need not be specifically stated in said contract but may be determined by formulae if set forth therein. Such contracts may include provisions for arbitration and reasonable restrictions against other disposal by cities, towns, or other public agencies of the substances covered thereby while the contract is in force and disposal under the contract is practicable. In the case of a city or town, such contracts may be entered into by officers acting under the authority of the city council of a city or the town meeting in the case of a town, which authorization may be general. The obligations represented by the payments to be made in such a contract shall not be included in any determination of the borrowing capacity of such city or town under any limitation on its indebtedness. Such a contract shall not be subject to section four of chapter forty and shall not be precluded by the acceptance of section nine A of chapter ninety-two. To the extent of uncommitted capacity, any municipality shall be entitled to contract with a user or an operator of solid waste disposal facilities established or to be established hereunder.

(*h*) The establishment and operation of solid waste disposal facilities hereunder shall be subject to applicable laws except as otherwise provided herein. Reasonable requirements may be imposed thereon by proceedings or regulations pursuant to section one hundred and fifty-A of chapter one hundred and eleven but the assignment of a site may not be rescinded, other than on appeal from the original assignment, pursuant to said section or otherwise. In the event that solid waste disposal facilities financed in whole or in part hereunder include or are to include facilities for the production of steam as a by-product, either the financing authority or a corporation, whether domestic or foreign, or other person owning, occupying or operating the facilities shall have the powers granted by section twelve of chapter one hundred and fifty-eight but the production and sale of such steam and the foregoing grant of powers shall not cause such a corporation to be otherwise subject to chapter one hundred and fifty-eight or excluded from chapter one hundred and fifty-six or one hundred and fifty-six B or cause such a corporation to be deemed a heat or power company for the purposes of the corporation laws of the commonwealth.

(*i*) A municipality acting by and through an authority in connection with a project for solid waste disposal facilities financed under this chapter may apply for, accept and use any federal or state grant or loan for such project.

Added by St.1971, c. 1017, § 2. Amended by St.1972, c. 373, § 2; St.1973, c. 1160, § 2; St.1978, c. 495, §§ 14, 15.

§ 22. Pollution control facilities; financing; findings; financing authority; applicable laws

(*a*) A municipality acting by and through an authority may finance pollution control facilities in the same manner provided by this chapter for industrial development facilities, except as otherwise hereinafter provided.

(*b*) The requirements of clauses (*e*), (*g*), (*i*), and (*k*) of subsection (2) of section twelve shall not apply to projects for pollution control. It shall be necessary, however, that the state industrial finance board find that a substantial public benefit will result from the project and in the case of pollution control facilities for water, the division of water pollution control in the department of environmental quality engineering, or, in the case of pollution control facilities for air, the commissioner of environmental quality engineering, has found that the project as designed is in furtherance of the purpose of abating or controlling water pollution or air pollution, as the case may be.

(*c*) An authority having industrial development powers or solid waste disposal powers, heretofore or hereafter organized, shall also have pollution control powers under this section but the provisions of this section shall not affect the power of a municipality, acting by and through an authority, to finance pollution control facilities as a part of an industrial development project or solid waste disposal project.

Added by St.1972, c. 775, § 2. Amended by St.1975, c. 706, § 100; St.1977, c. 206, §§ 4A, 5; St.1978, c. 495, § 16.

§ 23. Pollution control facilities; grants or loans

A municipality acting by and through an authority in connection with a project for pollution control facilities financed or to be financed under this chapter may apply for and accept and use any grant, loan, or grant and loan of federal or state funds for such pollution control facilities.

Added by St.1972, c. 775, § 3.

CHAPTER 40E

MASSACHUSETTS INDUSTRIAL DEVELOPMENT AUTHORITY

Sec.
1. Public purpose.

§ 1. Public purpose

It is hereby declared that there currently exists in certain areas of the commonwealth a critical condition of unemployment and that such condition may well exist, from time to time, in other areas of the commonwealth; that in some areas of the commonwealth such conditions are chronic and of long standing and that, without remedial measures, they may become so in other areas of the commonwealth; that economic insecurity due to unemployment is a serious menace to the health, safety, morals and general welfare of not only the people of the affected areas but of the people of the entire commonwealth; that involuntary unemployment and its resulting burden of indigency falls with crushing force upon the unemployed worker and ultimately upon the commonwealth in the form of public assistance and unemployment compensation; that the absence of employment and business opportunities for the youth of such areas is a threat to the strength and permanence of their faith in our American political and economic institutions and the philosophy of freedom on which those institutions are based; that unemployment and the absence of new economic opportunities in such areas have caused thousands of workers and their families to migrate elsewhere to find work and establish homes, and that this exodus has tended to reduce the tax base of counties, cities, boroughs and other local governmental jurisdictions, and impair their financial ability to support education and other local governmental services; that security against unemployment and the resulting spread of indigency and economic stagnation in the areas affected can best be provided by the promotion, attraction, stimulation, rehabilitation and revitalization of commerce, industry and manufacturing in such areas; that the present and prospective health, safety, morals, right to gainful employment and general welfare of the people of the commonwealth requires as a public purpose the promotion and development within areas of critical unemployment of new and expanded industrial and manufacturing enterprises; that the device under which private community industrial development organizations in Massachusetts acquire or build industrial buildings with funds raised through popular subscription, mortgage borrowing or otherwise, for lease and sale to expanding industries has proven effective in creating new employment and business opportunities locally, is in accord with the American tradition of community initiative and enterprise, and requires and deserves encouragement and support from the commonwealth, as a means toward alleviation of unemployment and chronic economic distress; that community industrial development corporations in Massachusetts have themselves invested substantial funds in successful industrial development projects and experience difficulty in undertaking additional such projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizeable mortgage loans; that there is a need to stimulate a larger flow of private investment funds from banks, investment houses, insurance companies and other financial institutions into such community industrial building programs in areas of chronic economic distress; that by increasing the number of community industrial building projects presenting attractive opportunities for private investment in such areas, a larger portion of the private capital available in Massachusetts for investment can be put to use in general economic development of the commonwealth.

It is therefore imperative that for the purpose of alleviating unemployment with its resulting spread of indigency and economic stagnation that promotion and development of industrial and manufacturing enterprises and research and development facilities in those areas in which conditions of critical unemployment currently, or may from time to time exist, is a public purpose.

Added by St.1974, c. 858.

CHAPTER 41

OFFICERS AND EMPLOYEES OF CITIES, TOWNS AND DISTRICTS

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ELECTION OF TOWN OFFICERS

§ 1. Officers to be elected; tenure

Every town at its annual meeting shall in every year when the term of office of any incumbent expires, and except when other provision is made by law, choose by ballot from its registered voters the following town officers for the following terms of office:

A town clerk for the term of one or more years.

A town treasurer for the term of one or three years.

One or more collectors of taxes for the term of one or three years, unless the town votes otherwise or votes to authorize its treasurer to act as collector.

Three or five selectmen for the term of one or three years, subject to the provisions of section twenty-one.

One, three or five assessors for the term of three years.

One or three auditors for the term of one or three years, except where such office is abolished as provided in section fifty-five.

One or more highway surveyors for the term of one or three years; or

A road commissioner for the term of one year; or

Three road commissioners for terms of three years, as the town may vote.

A sewer commissioner for the term of one year; or

Three sewer commissioners for the terms of three years if the town has provided for such officers, unless the town by vote authorizes its road commissioners to act as sewer commissioners.

A tree warden for the term of one or three years, unless the town by vote or by-law provides that he shall be appointed.

One or more constables for a term of three years, unless the town by vote provides that they shall be appointed.

Three, five, six, seven or nine members of the school committee for terms of three years.

Three or more assistant assessors, if the town so votes, for the term of three years.

Three members of the board of health for the term of three years if the town provides for such board, otherwise the selectmen shall act as a board of health.

All other town officers shall be appointed by the selectmen unless other provision is made by law or by vote of the town.

In any town or district in which the election date of the officers, authorized under this section, is changed, the officers currently serving shall continue to hold their offices until the appointment or election and qualification of their successors.

In any case where three or more members of a board are to be elected for terms of more than one year, as nearly one third as may be shall be elected annually.

The provisions of this section or any of the following sections of this chapter which authorize or require the fixing of the terms of office of members of any board, commission or body in such a manner that all such terms would not expire at the same time shall not apply with respect to such board, commission or body after the town has voted under section two of chapter fifty-four A to elect the members thereof by the proportional representation method of election.

Amended by St.1934, c. 155, § 1; St.1938, c. 341, § 2; St.1939, c. 3; St. 1939, c. 129; St.1943, c. 453, § 3; St.1953, c. 267, § 1; St.1955, c. 33; St.1961, c. 354, § 1; St.1967, c. 658, § 2; St.1973, c. 1134; St.1977, c. 690, § 1; St.1978, c. 349, § 4.

§ 1A. District defined

Except as otherwise expressly provided, the word "district", as used in this chapter, shall mean a fire, water, sewer, water pollution abatement, refuse disposal, light, or improvement district, or any other district, howsoever named, formed for the purpose of carrying out any of the aforementioned functions, whether established under general law or special act.

Added by St.1967, c. 45, § 1. Amended by St.1969, c. 505, § 4.

§ 2. Establishment of new board or office; effect; increase or decrease in board membership or number of officers

Where the town elects a new board or officer to perform the duties of an existing board or officer, the office of such existing board or officer shall terminate upon the qualification of the new board or officer. Where official ballots are used, the establishment of a new board or office, or the fixing of the term of office of town officers where such term is optional, or the increase or reduction of the number of members of a board, shall be determined at a meeting held at least thirty days before the annual meeting. In towns not using official ballots the matter may be determined by vote at the annual meeting. Such vote shall continue in effect until rescinded. If a town votes to increase the number of members of any board, such increase shall be made by adding one or more to each class, to hold office according to the tenure of the class to which they are severally chosen, as will within three years effect it, and such vote to increase shall remain in force until the increase under it is accomplished. If a town votes to diminish the number of members of any board, such diminution shall be made by choosing annually such number as will within three years effect it, and a vote to diminish shall remain in force until the diminution under it is accomplished. If a town votes to reduce a board of three members to a single officer, such vote shall take effect at the following annual town meeting, and upon the election and qualification of such officer the term of said board shall terminate; provided, that in towns where official ballots are used, unless the vote thus passed is more than thirty days prior to the annual town meeting, it shall not take effect until the succeeding annual town meeting.

§ 3. City officers; powers and duties

Officers of cities shall have the powers and be subject to the liabilities of the corresponding town officers, if no other provisions are made relative to them.

Amended by St.1978, c. 349, § 5.

§ 4A. Members of town and district boards eligible to hold other offices, salary

Except as otherwise expressly provided, a district board, if authorized by vote of the district at an annual district meeting, or a town board may, if authorized by vote of the town at an annual town meeting, appoint any member thereof to another town or district office or position for the term provided by law, if any, otherwise for a term not exceeding one year. The salary of such appointee shall be fixed by vote of the town or district, notwithstanding the provisions of section one hundred and eight. In this section, the word "town" shall not include city.

Amended by St.1951, c. 6; St.1969, c. 718.

SELECTMEN

§ 21. Authorization for selectmen to act as or appoint other town officers

By vote of a town meeting called for the purpose in any town at least sixty days before an annual meeting, or upon request by petition of ten per cent of the qualified voters of any town filed with the selectmen thereof at least sixty days before an annual town meeting, asking that the selectmen act as a water and sewer board, water commissioners, water and municipal light commissioners, municipal light board, sewer commissioners, park commissioners, board of public works, board of health, assessors, or commission of public safety, or perform the duties of such boards or officers or any of them or that cemetery commissioners, assessors, a superintendent of streets, a chief of the police and fire departments or board of health be thereafter appointed by the selectmen, the selectmen of such town shall include in the warrant for such annual meeting for submission to the voters such question or questions in the following form, to be placed on the official ballot in towns using such ballot:—

Shall the town vote to have its selectmen act as ?

YES	
NO	

Shall the town vote to have its selectmen appoint ?

YES	
NO	

If a town, in which the selectmen are elected for terms of one year, shall vote in accordance with this section that its selectmen shall act as or perform the duties of any of the aforesaid boards or officers, it shall, at the next annual meeting, elect one selectman for one year, one for two years and one for three years, or, if five are to be elected, one for one year, two for two years and two for three years, and thereafter in either event shall elect them for terms of three years. Upon the election and qualification of the selectmen at such next annual meeting, and upon the appointment and qualification by oath of the officers herein authorized to perform the duties of any existing town board or officer, the term of office of such existing board or officer shall thereupon terminate, and all the duties, powers and obligations of said boards and officers shall be transferred to and imposed upon their successors.

Amended by St.1934, c. 155, § 2; St.1953, c. 101, § 2; St.1967, c. 658, § 4; St.1977, c. 157; St.1977, c. 690, § 2.

§ 22. Officers appointed by selectmen; tenure; compensation; vacancies

Officers appointed by authority of a vote under the preceding section shall hold office until removed by the selectmen, and shall receive such salary as the selectmen may determine, subject to the appropriations of the town therefor; and any vacancies existing in any of said offices under the supervision and control of the selectmen shall be filled in the manner of an original appointment.

§ 23. Rescission of vote by selectmen; election of other officers; tenure, etc.

A town may, after a vote under section twenty-one has been in effect therein for a period of not less than three years, by a vote at a meeting held at least thirty days before the annual town meeting, rescind such action in whole or in part, and thereupon said town shall, at the next town meeting, nominate and elect such officers as are necessary to carry out the duties exercised in accordance with section twenty-one by the board of selectmen or officers appointed by them. Such officers, when to be elected for three year terms, if members of a board of three or more, shall be nominated and elected for one, two or three years respectively, and thereafter for the term of three years, and upon their election and qualification shall have all the duties and obligations imposed upon them by law.

§ 23A. Executive secretary; appointment; tenure, etc.

A town may by vote or by-law authorize and empower the selectmen to appoint an executive secretary who may be appointed by them for a term of one or three years and to remove him at their discretion. An executive secretary appointed under the provisions of this section shall be sworn to the faithful performance of his duties. During the time that he holds office he shall hold no elective town office, but he may be appointed by the selectmen or, with their approval, by any other town officer, board, committee or commission, to any other town office or position consistent with his office. He shall receive such aggregate compensation, not exceeding the amount appropriated therefor, as the selectmen may determine. He shall act by and for the selectmen in any matter which they may assign to him relating to the administration of the affairs of the town or of any town office or department under their supervision and control, or, with the approval of the selectmen, may perform such other duties as may be requested of him by any other town officer, board, committee or commission.

Added by St.1956, c. 145.

§ 23B. Town departments; investigations and reports

The selectmen of any town may make an investigation into the conduct and operation of any town department. Upon completion of such investigation a report shall be submitted to the town clerk and such report shall be printed in the annual town report.

Added by St.1959, c. 98.

§ 23D. Municipal data processing centers

A city by ordinance and a town by by-law may provide for the establishment of a municipal data processing center for the use of any department, office, board, committee or agency of the city or town, including the school committee and any public authority or special district within the town and for the appointment of a data processing coordinator.

The data processing center shall be under the supervision and control of the coordinator and shall provide programs or systems for the collection, processing, storage and retrieval of information, and the preparation of reports.

Such ordinance or by-law may provide for the establishment and duties of an advisory board to assist the coordinator in planning and scheduling the use of the data processing center.

The coordinator may also serve in any other public office or position in the city or town, notwithstanding any provision of any general or special law to the contrary. The office or position of coordinator shall not be subject to the provisions of chapter thirty-one.

Added by St.1966, c. 551.

AUDITOR

§ 50. Powers and duties

The auditors of a town shall examine the books and accounts of all its officers and committees intrusted with the receipt, custody or expenditure of money, and all original bills and vouchers on which money has been or may be paid from its treasury. They shall have free access to such books, accounts, bills and vouchers as often as once a month for the purpose of examination, and shall examine the same at least once in each year, and annually report in writing the result of their examinations. They shall, at least once in each year, verify the cash balance of each of such officers and committees by actual count of the cash and by reconciliation of bank balances, and shall insert in their annual report their certificate under oath of the facts so found.

§ 52. Approval of bills

All accounts rendered to or kept in the departments of any city shall be subject to the inspection of the city auditor or officer having similar duties, and in towns they shall be subject to the inspection of the selectmen. The auditor or officer having similar duties, or the selectmen, may require any person presenting for settlement an account or claim against the city or town to make oath before him or them, in such form as he or they may prescribe, as to the accuracy of such account or claim. The wilful making of a false oath shall be punishable as perjury. The auditor or officer having similar duties in cities, and the selectmen in towns, shall approve the payment of all bills or pay rolls of all departments before they are paid by the treasurer, and may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive; and in that case the auditor or officer having similar duties, or the selectmen, shall file with the city or town treasurer a written statement of the reasons for the refusal; and the treasurer shall not pay any claim or bill so disallowed. This section shall not abridge the powers conferred on town accountants by sections fifty-five to sixty-one, inclusive.

§ 53. Auditing of public trusts

Town auditors shall at least once every year, and so much oftener as they deem necessary, audit the accounts of the trustees of any property the principal or income of which, in whole or in part, was bequeathed or given in trust for public uses for the benefit of the town or any part thereof, or for the benefit of the inhabitants of the town or of any part thereof, and examine and estimate the funds, securities and evidences of property held by such trustees. Said trustees shall give said auditors free access to their accounts, funds, securities and evidences of property; and any such trustee refusing to exhibit the same shall be punished by a fine of not less than fifty nor more than two hundred dollars. Town auditors shall include in their annual reports a report of such auditing and investigation; and if they discover any fraud or irregularity they shall immediately report the same to the mayor and city treasurer or to the selectmen and town treasurer. They shall, at least once in each year, verify the cash balance of such trustees by actual count of the cash and by reconciliation of bank balances, and shall insert in their annual report their certificate under oath of the facts so found; provided, however, that they need not so verify the cash balance by actual count of the cash if the trustee is a bank, banking association or trust company.

Amended by St.1948, c. 84.

§ 54. Notice to auditor of payment of public funds to treasurer

Whenever any officer of the commonwealth, or of a county, city or town, makes a payment of public money to the treasurer of a city or town in the commonwealth, he shall furnish at the same time to the auditor of such city or town, or to the town accountant, if there is no auditor, a written statement of the amount of the payment, and the date and purpose thereof.

ACCOUNTANT

§ 55. Appointment; tenure; powers and duties, etc.

Any town may authorize the selectmen to appoint a town accountant, who shall perform the duties and possess the powers of town auditors as defined in sections fifty to fifty-three, inclusive. In towns so authorizing the appointment of a town accountant the office of town auditor may, if the town so vote, be abolished. In towns which have accepted chapter thirty-one or corresponding provisions of earlier laws, the appointment of the town accountant shall be subject to the civil service rules. The town accountant shall be sworn to the faithful performance of his duties, shall hold no other town office involving the receipt or disbursement of money, and shall hold office for three years and until his successor is qualified; provided, that the town clerk, if he holds no other office involving the receipt or disbursement of money, may be appointed town accountant.

§ 56. Warrants for payment of bills

The selectmen and all boards, committees, heads of departments and officers authorized to expend money shall approve and transmit to the town accountant as often as once each month all bills, drafts, orders and pay rolls chargeable to the respective appropriations of which they have the expenditure. Such approval shall be given only after an examination to determine that the charges are correct and that the goods, materials or services charged for were ordered and that such goods and materials were delivered and that the services were actually rendered to or for the town as the case may be; provided, however, that such approval may be given to any bill received from a state agency for the town's share of the costs of a federal urban planning assistance program, established under the provisions of section 701 of Public Law 83–560, as amended,[1] before any goods, materials or services ordered or to be ordered under such a program have been delivered or actually rendered, as the case may be. The town accountant shall examine all such bills, drafts, orders and pay rolls, and, if found correct and approved as herein provided, shall draw a warrant upon the treasury for the payment of the same, and the treasurer shall pay no money from the treasury except upon such warrant approved by the selectmen. If there is a failure to elect or a vacancy occurs in the office of selectman, the remaining selectman or selectmen, together with the town clerk, may approve such warrant. The town accountant may disallow and refuse to approve for payment, in whole or in part, any claim as fraudulent, unlawful or excessive, and in such case he shall file with the town treasurer a written statement of the reasons for such refusal. The treasurer shall not pay any claim or bill so disallowed by the town accountant. So far as apt this section shall apply to cities.

Amended by St.1950, c. 55; St.1956, c. 485; St.1967, c. 249; St.1967, c. 890; St.1975, c. 168; St.1977, c. 348, § 1.

[1] 40 U.S.C.A. § 461.

§ 57. Books of account and financial records

The town accountant shall keep a complete set of books wherein shall be entered the amount of each specific appropriation, the amounts and purposes of expenditures made therefrom, the receipts from each source of income, the amount of each assessment levied, and the abatements made; and he shall keep his accounts, so far as practicable, in conformity with the classifications and forms prescribed by the director of accounts in accordance with section forty-three of chapter forty-four and in conformity with any systems, classifications, forms and designations prescribed pursuant to regulations of the board of education for use by school committees. The town accountant shall have custody of all contracts of the town, shall keep a register of the sureties on all bonds of indemnity given to the town, shall keep a detailed record of the town debt, showing the purpose for which it was incurred, when incurred, when due, the rate of interest and the provisions made for the payment of the debt.

Amended by St.1974, c. 728, § 1.

§ 59. Annual estimates; furnishing to town accountant

The selectmen and all boards, committees, heads of departments, or other officers of a town authorized by law to expend money shall furnish to the town accountant, or, if there is no town accountant, to the appropriation, advisory or finance committee, if any, otherwise to the selectmen, not less than ten days before the end of the calendar year, or not less than ninety days prior to the date of the start of the annual town meeting, whichever is later, detailed estimates of the amount necessary for the proper maintenance of the departments under their jurisdiction for the ensuing fiscal year, with explanatory statements as to any changes from the amounts appropriated for the same purposes in the then current fiscal year, and an estimate of amounts necessary for outlays or permanent improvements. They shall also prepare estimates of any income likely to be received by the town during the ensuing fiscal year in connection with the town's business or property intrusted to their care. The selectmen shall include in their estimates the salaries and expenses connected with their own office, and the salaries of all other town officers shall be included in the estimates for the office, department or branch of the public service of which they are in charge. The treasurer shall, in addition to his estimate of the amount required for the maintenance of his own office, prepare a separate statement indicating the amounts required for the payment of interest on the town debt and for the payment of such portions of the town debt as may become due during the ensuing fiscal year.

Amended by St.1936, c. 94; St.1969, c. 849, § 41; St.1973, c. 1099.

OFFICERS IN CHARGE OF ROADS, SEWERS AND WATER WORKS

§ 63. Road and sewer commissioners

A town may at an annual meeting if official ballots are not used, otherwise at a meeting held at least thirty days before the annual meeting, vote to elect in the following manner three road commissioners or three sewer commissioners, or both.

It shall, at the annual meeting when such vote is passed or at the annual meeting next succeeding the meeting at which the vote was passed, elect one for one year, one for two years and one for three years; and at each annual meeting thereafter it shall elect one for three years. A town which has voted to elect said officers as herein provided may in like manner rescind such action; and thereupon, if at an annual meeting, the offices of road commissioners or sewer commissioners or both shall be abolished. If such vote is taken at a meeting held at least thirty days before the annual meeting, such abolition shall take effect at the next annual meeting. Upon the election of road commissioners as herein provided, the office of highway surveyor shall be abolished.

§ 65. Sewer commissioners; powers and duties

If sewer commissioners be chosen, they shall, as to sewers and drains, exclusively have the powers, perform the duties and be subject to the liabilities and penalties of selectmen and road commissioners.

§ 69. Superintendent of water or sewer department

If a town votes under section twenty-one to have its selectmen act as water and sewer boards, water commissioners or sewer commissioners, the selectmen may appoint a suitable person to act as superintendent of the water or sewer department or designate the superintendent of streets so to act if the town has voted to have its selectmen appoint such officer, who, subject to the control of the selectmen, shall have all necessary powers therefor.

§ 69A. Water commissioners; election; tenure; quorum; vacancies

Any town establishing a water supply or water distributing system under authority of section thirty-nine A of chapter forty may establish a board of three water commissioners or authorize its selectmen to act as such. Such commissioners shall, in the first instance, be elected by ballot to hold office, one until the expiration of three years, one until the expiration of two years, and one until the expiration of one year, from the next succeeding annual town meeting; and at the annual town meeting held on the day on which the shortest of such terms expires, and at each annual town meeting thereafter, one such commissioner shall be elected by ballot for the term of three years. A majority of said commissioners shall constitute a quorum for the transaction of business. After the election of a board of water commissioners under authority of this section, any vacancy occurring in said board from any cause may be filled for the remainder of the unexpired term by said town at any legal town meeting called for the purpose. Any such vacancy may be filled temporarily in the manner provided by section eleven, and the person so appointed shall perform the duties of the office until the next annual meeting of said town or until another person is qualified. Nothing herein contained shall prevent action under section twenty-one or sixty-nine.

Added by St.1938, c. 172, § 4.

§ 69B. Water commissioners; powers and duties

The water commissioners, or the selectmen authorized to act as such, in a town establishing a water supply or water distributing system under authority of section thirty-nine A of chapter forty shall have exclusive charge and control of the water department and water system, subject to all lawful by-laws and to such instructions, rules and regulations as the town may from time to time impose by its vote. They may establish fountains and hydrants, may relocate or discontinue the same, may regulate the use of the water and fix and collect just and equitable prices and rates for the use thereof, and shall prescribe the time and manner of payment of such prices and rates. The income of the water works shall be appropriated to defray all operating expenses, interest charges and payments on the principal as they accrue upon any bonds or notes issued for the purpose of a municipal water supply. If in any fiscal year there should be a net surplus remaining after providing for the aforesaid charges for that fiscal year, such surplus, or so much thereof as may be necessary to reimburse the town for moneys theretofore paid on account of its water department, shall be paid into the town treasury. If in any fiscal year there should be a net surplus remaining after providing for the aforesaid charges and for the payment of any such reimbursement in full, such surplus may be appropriated for such new construction as the water commissioners, or selectmen authorized to act as such, with the approval of the town, may determine upon; and in case a net surplus should remain after payment for such new construction the water rates shall be reduced proportionately. Said commissioners, or the selectmen authorized to act as such, shall annually, and as often as the town may require, render a report upon the condition of the works under their charge, and an account of their doings, including an account of the receipts and expenditures.

The provisions of this section relative to the powers and duties of the water commissioners, or the selectmen acting as such, shall also apply to the commission, board or person having charge and control of the water department or water system of any city, town, or district established under special law, notwithstanding any contrary provision therein, upon the acceptance of this section by such city, town, or district.

Added by St.1938, c. 172, § 4. Amended by St.1965, c. 99; St.1969, c. 849, § 43A; St.1971, c. 766, § 9.

BOARD OF PUBLIC WORKS

§ 69G. Office of lands and natural resources; establishment; powers and duties; director and assistants

Every city or town may establish an office of lands and natural resources. Said office shall have charge of such lands as may be committed to its care and may perform such maintenance and improvement work on other municipal lands as may be permitted by the board, department, commission or committee in charge thereof. Said office shall exercise the duties of tree warden and superintendent of insect pest control, and upon the establishment of said office the offices of tree warden and superintendent of insect pest control shall be abolished. Said office shall be under the control of a director qualified by training and experience in the field of arboriculture and licensed by the pesticide board in the department of environmental quality engineering. The city manager or the town manager in a city or town having such manager, the mayor in any other city and the selectmen in any other town shall appoint said director for a term of three years. The commissioner of environmental management shall be notified in writing forthwith by the city or town clerk of said appointment and the name and address of said director. The director may appoint such assistants as appropriations permit. He shall have control of all sums appropriated for and to be expended by the office and may apply for and receive such federal, state and county assistance as may be available. Nothing contained in this section shall be construed to affect the powers and duties of a conservation commission established under section eight C of chapter forty.

Added by St.1970, c. 233. Amended by St.1975, c. 706, §§ 101, 102.

PLANNING BOARD

§ 70. Creation; duties

Every city and every town having a population of more than ten thousand at the last preceding national or state census shall, and towns having a population of less than ten thousand may, create a planning board, which shall make careful studies of the resources, possibilities and needs of the town, particularly with respect to conditions injurious to the public health or otherwise in and about rented dwellings, and make plans for the development of the municipality, with special reference to proper housing of its inhabitants. In cities the said board shall be appointed by the mayor, subject to confirmation by the council, and in towns shall be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine.

No planning board shall be established under this section after December thirty-first, nineteen hundred and thirty-six, but any such board established under this section or corresponding provisions of earlier laws and existing on said date shall continue until its existence is terminated under section eighty-one B.

Amended by St.1936, c. 211, § 1; St.1947, c. 340, § 1; St.1957, c. 273, § 1.

§ 71. Annual report

Every planning board shall make a report annually to the city council or to the annual town meeting, giving information regarding the condition of the town and any plans or proposals for its development and estimates of the cost thereof. Every such planning board shall file with the secretary of communities and development a copy of each report made by it.

Amended by St.1943, c. 266; St.1953, c. 409, § 6; St.1966, c. 126; St.1975, c. 163, § 15.

§ 72. Ordinances and by-laws

Cities and towns may make ordinances and by-laws for carrying out the purposes of section seventy and of sections eighty-one A to eighty-one GG, inclusive, and they may appropriate money therefor. The planning board of a town, established under section seventy or corresponding provisions of earlier laws, may be authorized by vote of the town to act as park commissioners therein, and may be vested with all the powers and duties of park commissioners in towns.

Amended by St.1936, c. 211, § 2; St.1947, c. 340, § 2; St.1953, c. 674, § 1.

IMPROVED METHOD OF MUNICIPAL PLANNING

§ 81A. Planning board; establishment; membership; tenure; vacancies

Any city except Boston, and, except as hereinafter provided, any town may at any time establish a planning board hereunder. Every town not having any planning board shall, upon attaining a population of ten thousand, so establish a planning board under this section. A planning board established hereunder shall consist of not less than five nor more than nine members. Such members shall in cities be appointed by the mayor, subject to confirmation by the city council and in towns be elected at the annual town meeting or be appointed in such manner as an annual town meeting may determine; provided, that a town which has a planning board established under section seventy may, at an annual town meeting or at a special town meeting called for the purpose, vote to establish a planning board under this section and may provide that the members of the planning board then in office shall serve as members of the planning board under this section until the next annual town meeting. When a planning board is first established or when the terms of members of the planning board established under section seventy serving as members of the planning board under this section expire, as the case may be, the members of the planning board under this section shall be elected or appointed for terms of such length and so arranged that the term of at least one member will expire each year, and their successors shall be elected or appointed for terms of three or five years each as determined by the city council in the case of a city and by the town meeting in the case of a town. Any member of a board so established in a city may be removed for cause, after a public hearing, by the mayor, with the approval of the city council. A vacancy occurring otherwise than by expiration of term shall be filled for the unexpired term, in a city, in the same manner as an original appointment, and, in a town, if the members of the board are appointed, in the same manner as an original appointment and, if they are elected, in the manner provided in section eleven. Such a board shall elect annually a chairman and a clerk from among its own number, and may employ experts and clerical and other assistants. It may appoint a custodian of its plan and records, who may be the city engineer or town clerk. No member of a planning board shall represent before such board any party of interest in any matter pending before it.

Towns of less than ten thousand inhabitants, having no planning board established under this section may, by vote of the town meeting, authorize the board of selectmen to act as a planning board under this section until such a board is established; provided, that any such town, upon attaining a population of ten thousand, shall establish a planning board hereunder.

Added by St.1947, c. 340, § 4. Amended by St.1957, c. 273, § 2; St.1959, c. 143; St.1961, c. 276, § 2; St.1975, c. 565, § 1.

§ 81B. Planning board; powers and duties generally

In any city or town in which a planning board is established under section eighty-one A, if any of the powers and duties of planning boards or boards of survey are being exercised and performed by a planning board established under section seventy or corresponding provisions of earlier laws, or by a board of survey established under section seventy-three or corresponding provisions of earlier laws or by a special act, or by the board of selectmen acting as a planning board, or by any other board, all such powers and duties shall cease to exist, when the members of the planning board established in such city or town under section eighty-one A take office; and thereupon the planning board established therein under section eighty-one A shall have and exercise all the powers and duties theretofore conferred and imposed by general law upon planning boards and boards of survey in cities and towns, as the case may be, and all the powers and duties of any such board theretofore conferred and imposed by special law upon any board of the city or town, with respect to any matters pending before any of said boards at the time of the establishment of the planning board in such city or town under section eighty-one A, as well as the powers imposed by this section and sections eighty-one C to eighty-one GG, inclusive. The officer or person having custody of the records or plans, or both, of the former board shall turn them over to the officer or person entitled to custody of the records and plans of the planning board established under section eighty-one A.

Planning boards established under section eighty-one A, their officers and agents, may, so far as they deem it necessary in carrying out sections eighty-one A to eighty-one J, inclusive, enter upon any lands and there make examinations and surveys, and place and maintain monuments and marks; but any person injured in his property by such entry or other acts without his consent may recover the damages so caused under chapter seventy-nine. The superior court for the county in which the land affected by any of the provisions of sections eighty-one A to eighty-one J, inclusive, lies, sitting in equity, shall have jurisdiction on petition of a planning board established under section eighty-one A, to enforce any of the provisions of said sections, and any ordinances or by-laws made thereunder, and may restrain by injunction violations thereof.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 2.

§ 81C. Studies and reports of board; acting as park commissioners

The planning board established under section eighty-one A shall from time to time make careful studies and when necessary prepare plans of the resources, possibilities and needs of the city or town, and, upon the completion of any such study, shall submit to the city council or selectmen a report thereon, with its recommendations. A copy of each completed study shall be furnished to the division of community services of the department of community affairs. Said planning board shall report annually to the city council or to the annual town meeting, giving information regarding the condition of the city or town and any plans or proposals for its development and estimates of the cost thereof, and shall at the same time furnish a copy of its report to the division of community services of the department of community affairs. The planning board of a town established under section eighty-one A may be authorized by vote of a town meeting to act as park commissioners therein, and may be vested with all the powers and duties of park commissioners in towns.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 409, § 7; St.1967, c. 83, § 2; St.1973, c. 795, § 1.

§ 81D. Master or study plan; contents

A planning board established in any city or town under section eighty-one A shall make a master or study plan of such city or town or such part or parts thereof as said board may deem advisable and from time to time may extend or perfect such plan. Such plan shall show, among other things, existing and desirable proposed public ways, street grades, public places, bridges and tunnels, viaducts, parks, parkways, playgrounds, sites for public buildings and structures, building and zoning districts, pierhead and bulkhead lines, waterways, routes of railroads, buses and ferries, and locations of sewers, water conduits and other public utilities, and other pertinent features of such a plan, including existing private ways. Such planning board, after consultation with the municipal agencies charged with enforcing housing laws, ordinances, by-laws or regulations, and with the local housing or redevelopment authority, if any, shall designate in such plan, conservation, rehabilitation and redevelopment areas for the purpose of guiding residential protection, neighborhood improvement, and urban renewal programs. Such plan shall be made, and may be added to or changed from time to time, by a majority vote of such planning board and shall be a public record. The planning board shall, upon completion of any study plan or report, or any change or amendment to a study plan or report produced under this section, furnish a copy of such study plan or report or amendment thereto, to the division of community services of the department of community affairs.

Added by St.1947, c. 340, § 4. Amended by St.1954, c. 643, § 1; St.1973, c. 795, § 2.

§ 81E. **Official map; purpose; recordation**

Each city or town having a planning board established under section eighty-one A may, by action of its city council or town meeting adopt an official map, prepared under the direction of such planning board and showing the public ways and parks therein as theretofore laid out and established by law and the private ways then existing and used in common by more than two owners. Such official map is hereby declared to be established to conserve and promote the public health, safety and general welfare. Upon the adoption of such a map, and upon any change therein or addition thereto made as hereinafter provided, the city or town clerk shall forthwith file with the appropriate registry of deeds a certificate of such action and a copy of such map as adopted or as changed or added to. A copy of such official map or any change thereto, shall be furnished to the division of community services of the department of community affairs. After a plan bearing an endorsement of approval or accompanied by a certificate as provided in the subdivision control law has been recorded, the ways shown on said plan shall be and become a part of the official map. No public water supply or sewer or other municipal utility or improvement shall be constructed in any public or private way in any city or town having an official map elsewhere than in a subdivision approved under the subdivision control law, unless such way has been placed on or made part of such map.

No permit for the erection of any building elsewhere than in a subdivision approved under the subdivision control law in any city or town having an official map shall be issued unless a way giving access to the lot upon which such proposed building is to stand has been placed on or made a part of such map; provided, that an applicant for a building permit which has been denied under this section shall have the same remedy as a person whose application for a building permit has been denied under section eighty-one Y of this chapter.

If such law is not in effect in any city or town adopting an official map, such city or town shall forthwith provide a board of appeals in the manner set forth in section eighty-one Z, which shall have jurisdiction over appeals under this section in the same manner as provided in sections eighty-one Y to eighty-one AA.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 3; St.1973, c. 795, § 3.

§ 81F. Alteration of official map; damages for injuries

A city or town so adopting an official map, by action of its city council or town meeting, may whenever and as often as it may deem it for the public interest, change or add to such map so as to place thereon lines and notations showing existing or proposed locations, not theretofore mapped, of new or widened public ways and new or enlarged parks, and proposed discontinuances in whole or in part of existing or mapped public ways and parks. No such change or addition shall become effective until after a public hearing in relation thereto before the city council or a committee thereof or before the selectmen, at which parties in interest shall have an opportunity to be heard. At least ten days' notice of such a public hearing shall be given by advertisement in an official publication of, or in a newpaper of general circulation in, the city or town and by mailing a copy of such advertisement to all owners of property abutting on such proposed improvement or discontinuance, as appearing upon the most recent tax list. Any way, which is not a public way, appearing on an official map of a city or town may be modified or removed therefrom by the planning board acting in accordance with the procedure set forth in section eighty-one W, so far as apt, provided that there is no objection at a public hearing by any person in interest. No such change or addition which has not been previously recommended by the planning board established under section eighty-one A shall be adopted until after a report thereon by said board, and no variance from a plan prepared or approved by said planning board shall be made except by a two thirds vote of all the members of a city council, or by a two thirds vote of a town meeting; provided, that the last mentioned requirement shall be deemed to be waived in case the matter has been referred to said board for a report and it has failed to report within thirty days thereafter. Any person injured in his property by a change in the official map under this section may recover the damages so caused under chapter seventy-nine.

Added by St.1947, c. 340, § 4. Amended by St.1953, c. 674, § 4; St.1957, c. 235.

SUBDIVISION CONTROL

§ 81K. Designation of law

Sections eighty-one K to eighty-one GG, inclusive, shall be designated and may be known as "the subdivision control law". This designation shall, when apt, include corresponding provisions of earlier laws.

Added by St.1953, c. 674, § 7.

§ 81L. Definitions

In construing the subdivision control law, the following words shall have the following meaning, unless a contrary intention clearly appears:—

"Applicant" shall include an owner or his agent or representative, or his assigns.

"Certified by [or endorsed by] a planning board", as applied to a plan or other instrument required or authorized by the subdivision control law to be recorded, shall mean, bearing a certification or endorsement signed by a majority of the members of a planning board, or by its chairman or clerk or any other person authorized by it to certify or endorse its approval or other action and named in a written statement to the register of deeds and recorder of the land court, signed by a majority of the board.

"Drainage", shall mean the control of surface water within the tract of land to be subdivided.

"Lot" shall mean an area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings.

"Municipal service" shall mean public utilities furnished by the city or town in which a subdivision is located, such as water, sewerage, gas and electricity.

"Planning board" shall mean a planning board established under section eighty-one A, or a board of selectmen acting as a planning board under said section, or a board of survey in a city or town which has accepted the provisions of the subdivision control law as provided in section eighty-one N or corresponding provisions of earlier laws, or has been established by special law with powers of subdivision control.

"Preliminary plan" shall mean a plan of a proposed subdivision or resubdivision of land drawn on tracing paper, or a print thereof, showing (*a*) the subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan"; (*b*) the names of the record owner and the applicant and the name of the designer, engineer or surveyor; (*c*) the names of all abutters, as determined from the most recent local tax list; (*d*) the existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner; (*e*) the proposed system of drainage, including adjacent existing natural waterways, in a general manner; (*f*) the approximate boundary lines of proposed lots, with approximate areas and dimensions; (*g*) the names, approximate location and widths of adjacent streets; (*h*) and the topography of the land in a general manner.

"Recorded" shall mean recorded in the registry of deeds of the county or district in which the land in question is situated, except that, as affecting registered land, it shall mean filed with the recorder of the land court.

"Register of deeds" shall mean the register of deeds of the county or district in which the land in question, or the city or town in question, is situated, and, when appropriate, shall include the recorder of the land court.

"Registered mail" shall mean registered or certified mail.

"Registry of deeds" shall mean the registry of deeds of the county or district in which the land in question is situated, and, when appropriate, shall include the land court.

"Subdivision" shall mean the division of a tract of land into two or more lots and shall include resubdivision, and, when appropriate to the context, shall relate to the process of subdivision or the land or territory subdivided; provided, however, that the division of a tract of land into two or more lots shall not be deemed to constitute a subdivision within the meaning of the subdivision control law if, at the time when it is made, every lot within the tract so divided has frontage on (*a*) a public way or a way which the clerk of the city or town certifies is maintained and used as a public way, or (*b*) a way shown on a plan theretofore approved and endorsed in accordance with the subdivision control law, or (*c*) a way in existence when the subdivision control law became effective in the city or town in which the land lies, having, in the opinion of the planning board, sufficient width, suitable grades and adequate construction to provide for the needs of vehicular traffic in relation to the proposed use of the land abutting thereon or served thereby, and for the installation of municipal services to serve such land and the buildings erected or to be erected thereon. Such frontage shall be of at least such distance as is then required by zoning or other ordinance or by-law, if any, of said city or town for erection of a building on such lot, and if no distance is so required, such frontage shall be of at least twenty feet. Conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without the frontage above set forth, or the division of a tract of land on which two or more buildings were standing when the subdivision control law went into effect in the city or town in which the land lies into separate lots on each of which one of such buildings remains standing, shall not constitute a subdivision.

"Subdivision control" shall mean the power of regulating the subdivision of land granted by the subdivision control law.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 411, § 2; St.1956, c. 282: St.1957, c. 138, § 1; St.1957, c. 163; St.1958, c. 206, § 1; St.1961, c. 331; St.1963, c. 580; St.1965, c. 61; St.1979, c. 534.

§ 81M. Purpose of law

The subdivision control law has been enacted for the purpose of protecting the safety, convenience and welfare of the inhabitants of the cities and towns in which it is, or may hereafter be, put in effect by regulating the laying out and construction of ways in subdivisions providing access to the several lots therein, but which have not become public ways, and ensuring sanitary conditions in subdivisions and in proper cases parks and open areas. The powers of a planning board and of a board of appeal under the subdivision control law shall be exercised with due regard for the provision of adequate access to all of the lots in a subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in the adjacent public ways; for reducing danger to life and limb in the operation of motor vehicles; for securing safety in the case of fire, flood, panic and other emergencies; for insuring compliance with the applicable zoning ordinances or by-laws; for securing adequate provision for water, sewerage, drainage, underground utility services, fire, police, and other similar municipal equipment, and street lighting and other requirements where necessary in a subdivision; and for coordinating the ways in a subdivision with each other and with the public ways in the city or town in which it is located and with the ways in neighboring subdivisions. It is the intent of the subdivision control law that any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendation of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivisions of land; provided, however, that such board may, when appropriate, waive, as provided for in section eighty-one R, such portions of the rules and regulations as is deemed advisable.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 265; St.1969, c. 884, § 2.

§ 81N. Territorial extent of law; acceptance by municipalities

Except as provided in section eighty-one EE, the subdivision control law shall be in effect in every city, except Boston, and every town, which prior to the first day of January, nineteen hundred and fifty-four, established a planning board as defined in section eighty-one L, or which after said date establishes a planning board under section eighty-one A unless such city or town by vote of its city council or town meeting at the time of establishment of such board shall vote not to accept the provisions of the subdivision control law. Any such city or town which shall have voted not to accept such provisions may thereafter accept such provisions in the manner provided in section four of chapter four, and any city or town having a board of survey, however established, may accept such provisions in such manner, and the subdivision control law shall be similarly in effect in such cities and towns. In any city or town which has not established a planning board under section eighty-one A, but which has a board of survey, however established, and has prior to the first day of January, nineteen hundred and fifty-four, accepted corresponding provisions of the subdivision control law, or shall after said date accept the provisions of the subdivision control law in such manner, the board of survey shall have all the powers and be subject to all the duties of a planning board relating to subdivision control. In every city and town in which the subdivision control law is in effect the provisions of sections eighty-one K to eighty-one GG, as the same may from time to time be in force, shall, notwithstanding any contrary or inconsistent provision of any general or special law, apply in such city or town irrespective of whether the board having such powers is established under section eighty-one A or under any other general or special law. The subdivision control law, however, shall not become effective in any city or town in which it was not in effect on the first day of January, nineteen hundred and fifty-four, until the planning board of such city or town shall have notified the register of deeds and the recorder of the land court that the city or town has accepted the provisions of the subdivision control law and that the planning board has adopted its rules and regulations as provided in section eighty-one Q and shall have furnished the said register and recorder with a copy of the vote of the city council or town meeting under which the provisions of the subdivision control law were accepted in such city or town, certified by the city or town clerk, and a copy of such rules and regulations certified by said clerk.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 146; St.1959, c. 144.

§ 81O. Regulation of new subdivisions

No person shall make a subdivision of any land in any city or town in which the subdivision control law is in effect unless he has first submitted to the planning board of such city or town for its approval a plan of such proposed subdivision, showing the lots into which such land is to be divided and the ways already existing or which are to be provided by him for furnishing access to such lots, and the planning board has approved such plan in the manner hereinafter provided. After the approval of a plan the location and width of ways shown thereon shall not be changed unless the plan is amended accordingly as provided in section eighty-one W; but the number, shape and size of the lots shown on a plan so approved may, from time to time, be changed without action by the board, provided every lot so changed still has frontage on a public way or way shown on a plan approved in accordance with the subdivision control law of at least such distance, if any, as is then required by ordinance or by-law of said city or town for erection of a building on such lot, and if no distance is so required, has such frontage of at least twenty feet.

A plan shall be submitted under this section when delivered at a meeting of the board or when sent by registered mail to the planning board, care of the city or town clerk. If so mailed, the date of mailing shall be the date of submission of the plan.

Added by St.1953, c. 674, § 7. Amended by St.1963, c. 804.

§ 81P. Approval of plans not subject to control law; procedure

Any person wishing to cause to be recorded a plan of land situated in a city or town in which the subdivision control law is in effect, who believes that his plan does not require approval under the subdivision control law, may submit his plan to the planning board of such city or town in the manner prescribed in section eighty-one T, and, if the board finds that the plan does not require such approval, it shall forthwith, without a public hearing, endorse thereon or cause to be endorsed thereon by a person authorized by it the words "approval under the subdivision control law not required" or words of similar import with appropriate name or names signed thereto, and such endorsement shall be conclusive on all persons. Such endorsement shall not be withheld unless such plan shows a subdivision. If the board shall determine that in its opinion the plan requires approval, it shall within fourteen days of such submittal, give written notice of its determination to the clerk of the city or town and the person submitting the plan, and such person may submit his plan for approval as provided by law and the rules and regulations of the board, or he may appeal from the determination of the board in the manner provided in section eighty-one BB. If the board fails to act upon a plan submitted under this section or fails to notify the clerk of the city or town and the person submitting the plan of its action within fourteen days after its submission, it shall be deemed to have determined that approval under the subdivision control law is not required, and it shall forthwith make such endorsement on said plan, and on its failure to do so forthwith the city or town clerk shall issue a certificate to the same effect. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or in case of the certificate, by the city or town clerk, to the person submitting such plan. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The endorsement under this section may include a statement of the reason approval is not required.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 326, §§ 1, 2; St. 1957, c. 293, §§ 1, 2; St.1960, c. 197; St.1961, c. 332; St.1963, c. 363, § 1.

§ 81Q. Planning board; adoption of rules and regulations

After a public hearing, notice of the time and place of which, and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, a planning board shall adopt, and, in the same manner, may, from time to time, amend, reasonable rules and regulations relative to subdivision control not inconsistent with the subdivision control law or with any other provisions of a statute or of any valid ordinance or by-law of the city or town. Such rules and regulations may prescribe the size, form, contents, style and number of copies of plans and the procedure for the submission and approval thereof, and shall be such as to enable the person submitting the plan to comply with the requirements of the register of deeds for the recording of the same, and to assure the board of a copy for its files; and shall set forth the requirements of the board with respect to the location, construction, width and grades of the proposed ways shown on a plan and the installation of municipal services therein, which requirements shall be established in such manner as to carry out the purposes of the subdivision control law as set forth in section eighty-one M. Such rules and regulations shall not require referral of a subdivision plan to any other board or person prior to its submission to the planning board. In establishing such requirements regarding ways, due regard shall be paid to the prospective character of different subdivisions, whether open residence, dense residence, business or industrial, and the prospective amount of travel upon the various ways therein, and to adjustment of the requirements accordingly. Such rules and regulations may set forth a requirement that a turnaround be provided at the end of the approved portion of a way which does not connect with another way. Any easement in any turnaround shown on a plan approved under the subdivision control law which arises after January first, nineteen hundred and sixty, other than an easement appurtenant to a lot abutting the turnaround, shall terminate upon the approval and recording of a plan showing extension of said way, except in such portion of said turnaround as is included in said extension, and the recording of a certificate by the planning board of the construction of such extension. Such rules and regulations may set forth a requirement that underground distribution systems be provided for any and all utility services, including electrical and telephone services, as may be specified in such rules and regulations, and may set forth a requirement that poles and any associated overhead structures, of a design approved by the planning board, be provided for use for police and fire alarm boxes and any similar municipal equipment and for use for street lighting. Except in so far as it may require compliance with the requirements of existing zoning ordinances or by-laws, no rule or regulation shall relate to the size, shape, width, frontage or use of lots within a subdivision, or to the buildings which may be constructed thereon, or shall be inconsistent with the regulations and requirements of any other municipal board acting within its jurisdiction. No rule or regulation shall require, and no planning board shall impose, as a condition for the approval of a plan of a subdivision, that any of the land within said subdivision be dedicated to the public use, or conveyed or released to the commonwealth or to the county, city or town in which the subdivision is located, for use as a public way, public park or playground, or for any other public purpose, without just compensation to the owner thereof. The rules and regulations may, however, provide that not more than one building designed or available for use for dwelling purposes shall be elected or placed or converted to use as such on any lot in a subdivision, or elsewhere in the city or town, without the consent of the planning board, and that such consent may be conditional upon the providing of adequate ways furnishing access to each site for such building, in the same manner as otherwise required for lots within a subdivision. A true copy of the rules and regulations, with their most recent amendments, shall be kept on file available for inspection in the office of the planning board of the city or town by which they were adopted, and in the office of the clerk of such city or town. A copy certified by such clerk of any such rules and regulations, or any amendment thereof, adopted after the first day of January, nineteen hundred and fifty-four shall be transmitted forthwith by such planning board to the register of deeds and recorder of the land court, and no rule or regulation, or amendment thereof, adopted thereafter, under this section shall be effective until certified copies thereof have been so transmitted. Once a definitive plan has been submitted to a planning board, and written notice has been given to the city or town clerk pursuant to section eighty-one T and until final action has been taken thereon by the planning board or the time for such action prescribed by section eighty-one U has elapsed, the rules and regulations governing such plan shall be those in effect relative to subdivision control at the time of the submission of such plan. When a preliminary plan referred to in section eighty-one S has been submitted to a planning board, and written notice of the submission of such plan has been given to the city or town clerk, such preliminary plan and the definitive plan evolved therefrom shall be governed by the rules and regulations relative to subdivision control in effect at the time of the submission of the preliminary plan, provided that the definitive plan is duly submitted within seven months from the date on which the preliminary plan was submitted.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 370; St.1956, c. 307; St.1957, c. 139; St.1958, c. 206, § 3; St.1959, c. 410; St.1960, c. 196; St.1960, c. 417; St.1965, c. 64; St.1969, c. 884, § 3.

§ 81R. Waiver of strict compliance with rules and regulations

A planning board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the subdivision control law, waive strict compliance with its rules and regulations, and with the frontage or access requirements specified in said law, and may, where the ways are not otherwise deemed adequate, approve a plan on conditions limiting the lots upon which buildings may be erected and the number of buildings that may be erected on particular lots and the length of time for which particular buildings may be maintained without further consent by the planning board to the access provided. The planning board shall endorse such conditions on the plan to which they relate, or set them forth in a separate instrument attached thereto to which reference is made on such plan and which shall for the purpose of the subdivision control law be deemed to be a part of the plan.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 411, § 1.

§ 81S. Submission of preliminary plan; approval or disapproval; recording

Any person, before submitting his definitive plan for approval, may submit to the planning board and to the board of health, a preliminary plan, and shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the city or town clerk shall, if requested, give a written receipt therefor. Within sixty days after submission of a preliminary plan each board shall notify by certified mail the applicant and the clerk of the city or town either that the plan has been approved, or that the plan has been approved with modifications suggested by the board or agreed upon by the person submitting the plan, or that the plan has been disapproved and in the case of disapproval, the board shall state in detail its reasons therefor. The planning board shall notify the city or town clerk of its approval or disapproval, as the case may be. Except as is otherwise expressly provided, the provisions of the subdivision control law relating to a plan shall not be applicable to a preliminary plan, and no register of deeds shall record a preliminary plan.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 138, § 2; St.1958, c. 206, § 2; St.1959, c. 189; St.1963, c. 206; St.1964, c. 105, § 1.

§ 81T. Notice of submission of plan; hearing, etc.

Every person submitting a definitive plan of land to the planning board of a city or town for its approval or for a determination that approval is not required shall give written notice to the clerk of such city or town by delivery or by registered mail, postage prepaid, that he has submitted such a plan. If the notice is given by delivery the clerk shall, if requested, give a written receipt therefor to the person who delivered such notice. Such notice shall describe the land to which the plan relates sufficiently for identification, and shall state the date when such plan was submitted and the name and address of the owner of such land; and the facts stated in such notice shall be taken by the city or town clerk as true, unless the contrary is made to appear. Before approval, modification and approval, or disapproval of the definitive plan is given, a public hearing shall be held by the planning board, notice of the time and place of which and of the subject matter, sufficient for identification, shall be given by the planning board at the expense of the applicant by advertisement in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing, and by mailing a copy of such advertisement to the applicant and to all owners of land abutting upon the land included in such plan as appearing on the most recent tax list.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 122; St.1960, c. 266, § 1; St.1962, c. 207, § 1; St.1963, c. 363, § 2.

§ 81U. Approval, modification or disapproval of plan by board; prerequisites for decision

When a definitive plan of a subdivision is submitted to the planning board, as provided in section eighty-one *O*, a copy thereof shall also be filed with the board of health or board or officer having like powers and duties. Such health board or officer shall, within forty-five days after the plan is so filed, report to the planning board in writing, approval or disapproval of said plan, and, in the event of disapproval, shall make specific findings as to which, if any, areas shown on such plan cannot be used for building sites without injury to the public health, and include such specific findings and the reasons therefor in such report, and where possible, shall make recommendations for the adjustments thereof. Failure of such board or officer to report shall be deemed approval by such board or officer. Such health board or officer shall send a copy of such report, if any, to the person who submitted said plan. When the definitive plan shows that no public or community sewer is to be installed to serve any lot thereon, approval by a board of health or officer shall not be treated as, nor deemed to be approval of a permit for the construction and use on any lot of an individual sewage system; and approval of a definitive plan for a subdivision by a board of health or officer shall not be treated as, nor deemed to be, an application for a permit to construct or sue an individual sewage system on any lot contained therein.

After the hearing required by section eighty-one T and after the report of said health board or officer or lapse of forty-five days without such report, the planning board shall approve, or, if such plan does not comply with the subdivision control law or the rules and regulations of the planning board or the recommendations of the health board or officer, shall modify and approve or shall disapprove such plan. In the event of disapproval, the planning board shall state in detail wherein the plan does not conform to the rules and regulations of the planning board or the recommendations of the health board or officer and shall revoke its disapproval and approve a plan which, as amended conforms to such rules and regulations or recommendations. The planning board shall file a certificate of its action with the city or town clerk, a copy of which shall be recorded by him in a book kept for the purpose, and shall send notice of such action by registered mail, postage prepaid, to the applicant at his address stated on the application.

If the report of the board of health or board or officer having like powers and duties shall so require, the approval by the planning board shall be on condition that no building or structure shall be built or placed upon the areas designated without consent by such board of health or officer. In the event approval by the board of health or board or officer having like powers and duties is by failure to make a report, the planning board shall note on the plan that health approval is by failure to report.

Failure of the planning board either to take final action or to file with the city or town clerk a certificate of such action regarding a plan submitted by an applicant within sixty days after such submission, or such further time as may be agreed upon at the written request of the applicant, shall be deemed to be an approval thereof.

Notice of such extension of time shall be filed forthwith by the planning board with the city or town clerk.

Before endorsement of its approval of a plan, a planning board shall require that the construction of ways and the installation of municipal services be secured by one, or in part by one and in part by the other, of the methods described in the following clauses (1) and (2), which method may be selected and from time to time varied by the applicant:

(1) By a proper bond or a deposit of money or negotiable securities, sufficient in the opinion of the planning board to secure performance of the construction of ways and the installation of municipal services required for lots in the subdivision shown on the plan, and the planning board may require that the time be specified within which such construction and installation shall be completed.

(2) By a covenant, executed and duly recorded by the owner of record, running with the land, whereby such ways and services shall be provided to serve any lot before such lot may be built upon or conveyed, other than by mortgage deed; provided, that a mortgagee who acquires title to the mortgaged premises by foreclosure or otherwise and any succeeding owner of such premises or part thereof may sell any such lot, subject to that portion of the covenant which provides that no lot shall be built upon until such ways and services have been provided to serve such lot; and provided, further, that nothing herein shall be deemed to prohibit a conveyance by a single deed, subject to such convenant, of either the entire parcel of land shown on the subdivision plan or of all lots not previously released by the planning board. A deed of any part of the subdivision in violation hereof shall be voidable by the grantee prior to the release of the covenant but not later than three years from the date of such deed.

Any covenant given under the preceding paragraph and any condition required by the health board or officer shall be either inscribed on the plan or contained in a separate document, referred to on the plan.

The penal sum of any such bond, or the amount of any deposit held under clause (1) above, may, from time to time, be reduced by the planning board and the obligations of the parties thereto released by said board in whole or in part.

Upon the completion of the construction of ways and the installation of municipal services in accordance with the rules and regulations of the planning board, security for the performance of which was given by bond, deposit or covenant, or upon the performance of any covenant with respect to any lot, the applicant shall send by registered mail to the city or town clerk and the planning board a written statement that the said construction or installation in connection with which such bond, deposit or covenant has been given has been completed in accordance with said rules and regulations, such statement to contain the address of the applicant. If the planning board determines that said construction or installation has been completed, it shall release the interest of the town in such bond and return the bond or the deposit to the person who furnished the same, or release the covenant by appropriate instrument, duly acknowledged, which may be recorded. If the board determines that said construction or installation has not been completed, it shall specify in a notice sent by registered mail to the applicant and to the clerk of the city or town the details wherein said construction or installation fails to comply with its rules and regulations and upon failure so to do within forty-five days after the receipt by said clerk of said statement all obligations under the bond shall cease and terminate by operation of law, any deposit shall be returned and any such covenant shall become void. In the event that said forty-five day period expires without such specification, or without the release and return of the bond or return of the deposit or release of the covenant as aforesaid, the said clerk shall issue a certificate to such effect, duly acknowledged, which may be recorded.

Following the recording of a first mortgage covering the premises shown on the plan or a portion thereof given as security for advances to be made to the applicant by the lender, the planning board may, at its option, release lots from the operation of the covenant given pursuant to clause (2) above, without receipt of a bond or deposit of money upon delivery to the planning board of an agreement with the planning board, which agreement shall be executed by the applicant and the lender and shall provide for the retention by the lender of sufficient funds otherwise due the applicant to secure the construction of ways and the installation of municipal services. Said agreement shall also provide for a schedule of disbursements which may be made to the applicant upon completion of various stages of the work, and shall further provide that in the event the work is not completed within the time set forth by the applicant, any funds remaining undisbursed shall be available for completion.

Any such bond may be enforced and any such deposit may be applied by the planning board for the benefit of such city or town, as provided in section eighty-one Y, upon failure of the performance for which any such bond or deposit was given to the extent of the reasonable cost to such city or town of completing such construction and installation.

Before approval of a plan by a planning board, said board shall also in proper cases require the plan to show a park or parks suitably located for playground or recreation purposes or for providing light and air and not unreasonable in area in relation to the area of the land being subdivided and the prospective uses of such land, and if so determined said board shall by appropriate endorsement on the plan require that no building may be erected on such park or parks for a period of not more than three years without its approval.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 324; St.1958, c. 377, § 1; St.1960, c. 153; St.1960, c. 266, § 2; St.1963, c. 299; St.1963, c. 581; St.1964, c. 105, § 2; St.1965, c. 62; St.1967, c. 567; St.1972, c. 749, §§ 1, 2; St.1978, c. 422, §§ 1, 2.

§ 81V. Final approval of plan; endorsements, etc.

In case of approval of a plan by action of the planning board, after the expiration of twenty days without notice of appeal to the superior court, or if appeal has been taken after the entry of a final decree of the court sustaining the approval of such plan, the planning board shall cause to be made upon the plan a written endorsement of its approval. In case of the approval of a plan by reason of the failure of the planning board to act within the time prescribed, the city or town clerk shall, after the expiration of twenty days without notice of appeal to the superior court, or, if appeal has been taken, after receipt of certified records of the superior court indicating that such approval has become final, issue a certificate stating the date of the submission of the plan for approval, the fact that the planning board failed to take final action and that the approval resulting from such failure has become final. The plan bearing such endorsement or the plan and such certificate, as the case may be, shall be delivered by the planning board, or, in the case of the certificate, by the city or town clerk, to the person who submitted such plan. Except as provided in section eighty-one E, the existence of an official map in a city or town shall not affect the operation of the subdivision control law therein.

Added by St.1953, c. 674, § 7.

§ 81W. Modification, amendment or rescission of approval of plan; conditions

A planning board, on its own motion or on the petition of any person interested, shall have power to modify, amend or rescind its approval of a plan of a subdivision, or to require a change in a plan as a condition of its retaining the status of an approved plan. All of the provisions of the subdivision control law relating to the submission and approval of a plan of a subdivision shall, so far as apt, be applicable to the approval of the modification, amendment or rescission of such approval and to a plan which has been changed under this section.

No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights appurtenant thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages, if any, thereon; provided, however, that nothing herein shall be deemed to prohibit such modification, amendment or rescission when there has been a sale to a single grantee of either the entire parcel of land shown on the subdivision plan or of all the lots not previously released by the planning board.

So far as unregistered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect until (1) the plan as originally approved, or a copy thereof, and a certified copy of the vote of the planning board making such modification, amendment, rescission or change, and any additional plan referred to in such vote, have been recorded, (2) an endorsement has been made on the plan originally approved as recorded referring to such vote and where it is recorded, and (3) such vote is indexed in the grantor index under the names of the owners of record of the land affected. So far as registered land is affected, no modification, amendment or rescission of the approval of a plan nor change in a plan under this section shall take effect, until such modification, amendment or change has been verified by the land court pursuant to chapter one hundred and eighty-five, and in case of rescission, or modification, amendment or change not so verified, until ordered by the court pursuant to section one hundred and fourteen of said chapter one hundred and eighty-five.

Added by St.1953, c. 674, § 7. Amended by St.1973, c. 605; St.1977, c. 473.

§ 81X. Requirements for registration of plan

No register of deeds shall record any plan showing a division of a tract of land into two or more lots, and ways, whether existing or proposed, providing access thereto, in a city or town in which the subdivision control law is in force unless (1) such plan bears an endorsement of the planning board of such city or town that such plan has been approved by such planning board, and a certificate by the clerk of such city or town, is endorsed on the plan, or is separately recorded and referred to on said plan, that no notice of appeal was received during the twenty days next after receipt and recording of notice from the planning board of the approval of the plan, or, if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan, or (2) such plan bears an endorsement of the planning board that approval of such plan is not required, as provided in section eighty-one P, or (3) the plan is accompanied by a certificate of the clerk of such city or town that it is a plan which has been approved by reason of the failure of the planning board to act thereon within the time prescribed, as provided in sections eighty-one U and eighty-one V, or that it is a plan submitted pursuant to section eighty-one P and that it has been determined by failure of the planning board to act thereon within the prescribed time that approval is not required, and a reference to the book and page where such certificate is recorded is made on said plan; and, unless, in case of plans approved, the endorsement or certificate is dated within six months of the date of the recording, or there is also endorsed thereon or recorded therewith and referred to thereon a certificate of the planning board or city or town clerk, dated within thirty days of the recording, that the approval has not been modified, amended or rescinded, nor the plan changed. Such certificate shall upon application be made by the board or by the clerk unless the records of the board or clerk receiving the application show that there has been such modification, amendment, rescission or change. The planning board of a city or town which has authorized any person, other than a majority of the board, to endorse on a plan the approval of the board or to make any other certificate under the subdivision control law, shall transmit a written statement to the register of deeds and the recorder of the land court, signed by a majority of the board, giving the name of the person so authorized.

The contents of any such endorsement of the planning board or certificate by the clerk of the city or town shall be final and conclusive on all parties, subject to the provisions of section eighty-one W.

Such register and recorder shall each keep in a place open for public inspection a book which shall be a public record in which the name of each city or town in which, according to notices sent him by the board having powers of subdivision control in such city or town the subdivision control law is or may be in effect, shall be separately indexed and in which shall be entered all notices from such board or the board of appeal of such city or town relating to subdivision control, including copies of the rules and regulations of such boards. Such register and recorder may each accept for record any plan of land, otherwise appropriate for record, in a city or town of which the board having powers of subdivision control has not sent him notice that the subdivision control law is in effect in such city or town, without requiring the approval of the planning board of such city or town, or a certificate that no approval is necessary.

Notwithstanding the foregoing provisions of this section, the register of deeds shall accept for recording and the land court shall accept with a petition for registration or confirmation of title any plan bearing a certificate by a registered land surveyor that the property lines shown are the lines dividing existing ownerships, and the lines of streets and ways shown are those of public or private streets or ways already established, and that no new lines for division of existing ownership or for new ways are shown. The recording of any such plan shall not relieve any owner from compliance with the provisions of the subdivision control law or of any other applicable provision of law.

No register of deeds or recorder of the land court shall accept for record a notice of modification, amendment or rescission of approval of a plan of a subdivision unless such notice contains a statement by the planning board that such modification, amendment or rescission does not affect any lot or rights appurtenant thereto in such subdivision which lot was conveyed or mortgaged in good faith and for valuable consideration subsequent to the approval of the subdivision plan.

Added by St.1953, c. 674, § 7. Amended by St.1958, c. 207; St.1960, c. 189; St.1962, c. 313; St.1966, c. 380; St.1967, c. 248.

§ 81Y. Restrictions on construction of public ways, improvements and buildings; liability of grantors, etc.; court jurisdiction

In any city or town in which the subdivision control law is in effect, no public way shall be laid out, accepted or constructed, and no municipal service or improvement shall be constructed in a way within a subdivision, to serve the land therein, unless such way appears on a plan of such subdivision approved under such law, except by or in accordance with the affirmative vote of two thirds of those present and voting at a meeting of the city council or at a town meeting.

In any city or town in which the subdivision control law is in effect, the board or officer, if any, having the power and duty to issue permits for the erection of buildings shall not issue any permit for the erection of a building until first satisfied that the lot on which the building is to be erected is not within a subdivision, or that a way furnishing the access to such lot as required by the subdivision control law is shown on a plan recorded or entitled to be recorded under section eighty-one X, and that any condition endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, or waived by the planning board, and in the event that the planning board has by rule or regulation required that not more than one building for dwelling purposes be erected or placed or converted to use as such on any lot without its consent, until satisfied that such consent has been obtained. In any city or town in which the subdivision control law is in effect in which there is no board or officer having the power and duty to issue permits for the erection of buildings, no building shall be erected within a subdivision without written permission from the planning board of the city or town. Such permission shall be given when it appears that the subdivision control law, so far as applicable, has been complied with. If, however, the enforcement of the foregoing provisions of this paragraph would entail practical difficulty or unnecessary hardship, and if the circumstances of the case do not require that the building be related to a way shown on such plan, the board of appeal provided for in section eighty-one Z shall have power by vote of a majority of its members to issue a permit for the erection of such building, subject to the provisions of said section eighty-one Z and sections eighty-one AA and eighty-one BB.

If a subdivision of land has been made in a city or town while the subdivision control law is in effect in such city or town without a plan thereof recorded or entitled to be recorded under section eighty-one K, the person or persons executing and delivering the deed, mortgage or other instrument by which such subdivision was made shall be liable to each owner of such land or any part thereof who acquired title without notice or knowledge of such division having been made, for all damages sustained by such owner by reason of such failure to comply, in an action brought within one year after such delivery. Any person owning a lot in a subdivision, approval of which was required by the subdivision control law but not obtained, who did not make the subdivision and acquired title without notice or knowledge of the lack of such approval, may submit a plan of said lot and of the ways giving access thereto to the planning board, and such plan shall be acted upon in the same manner and with the same effect, so far as affects said lot and the rights of access appurtenant thereto, as a plan of a subdivision.

The superior court for the county in which the land affected by any of the provisions of the subdivision control law lies shall have jurisdiction in equity on petition of the planning board of a city of town, or of ten taxable inhabitants thereof, to review any action of any municipal board or officer of such city or town in disregard of the provisions of this section and to annul and enjoin such action, to enjoin the erection of a building in violation of this section, and otherwise to enforce the provisions of the subdivision control law and any rules or regulations lawfully adopted and conditions on the approval of a plan lawfully imposed thereunder, and may restrain by injunction violations thereof or make such decrees as justice and equity may require. No proceeding under this paragraph shall be instituted more than one year after the act or failure to act upon which such petition is based.

Added by St.1953, c. 674, § 7.

§ 81Z. Board of appeals; membership; tenure; removal; vacancies; jurisdiction

A city or town in which the subdivision control law is in effect shall, by ordinance or by-law, provide for a board of appeals, which shall have jurisdiction to issue a permit for the erection of a building under section eighty-one Y. Such board of appeals may be the existing board of appeals under the local building or zoning ordinance or by-law; provided, that if the board of appeals under the local zoning ordinance or by-law in any city or town is also the planning board in such city or town, it shall not act as a board of appeals under the subdivision control law. The mayor or selectmen shall appoint the members of the board of appeals within three months of the adoption of the ordinance or by-law. Pending appointment of the members of the board of appeals the city council or selectmen shall act as a board of appeals. Any board of appeals newly established hereunder shall consist of at least three members, who shall be appointed in a city by the mayor subject to the confirmation of the city council, or in a town by the selectmen, for terms of such length and so arranged that the term of one member shall expire each year; and said board shall elect annually a chairman from its own members and a clerk. Any board so newly established may also act as a board of appeals under the local building or zoning ordinance or by-law, or under both.

Any member of such a board of appeals may be removed for cause by the appointing authority upon written charges and after a public hearing. Vacancies shall be filled for unexpired terms in the same manner as in the case of original appointments. Ordinances or by-laws adopted hereunder may provide for the appointment in like manner of associate members of the board of appeals; and the chairman of the board may designate any such associate member to sit on the board in case of the absence, inability to act or interest on the part of a member thereof, or in the event of a vacancy on said board may designate any such associate member to sit as a member of the board until said vacancy is filled in the manner provided in this section.

Added by St.1953, c. 674, § 7. Amended by St.1957, c. 134; St.1958, c. 201.

§ 81AA. Board of appeals; rules; meetings; powers and duties; hearings

The board of appeals appointed under section eighty-one Z shall adopt rules not inconsistent with this section and sections eighty-one Y and eighty-one Z, for conducting its business and otherwise carrying out the purposes of said sections. Meetings of the board shall be held at the call of the chairman and also when called in such other manner as it shall determine in its rules. Such chairman, or, in his absence, the acting chairman, may administer oaths, summon witnesses and call for the production of papers. All hearings of the board shall be open to the public. The board shall cause to be made a detailed record of its proceedings, showing the vote of each member upon each question, or, if any member is absent or fails to vote, indicating such fact, and setting forth clearly the reason or reasons for its decisions, and of its other official acts, copies of all of which shall be immediately filed in the office of the city or town clerk and shall be public records.

Before taking any action under section eighty-one Y, the board of appeals shall hold a hearing at which parties in interest shall have an opportunity to be heard, in person or by agent or attorney. Notice of the time and place of such hearing and of the subject matter, sufficient for identification, shall be published in a newspaper of general circulation in the city or town once in each of two successive weeks, the first publication to be not less than fourteen days before the day of the hearing or if there is no such newspaper in such city or town then by posting such notice in a conspicuous place in the city or town hall for a period of not less than fourteen days before the day of such hearing. The board may require the appellant to pay the expense of giving such notice. The board may, as a condition of granting a permit under section eighty-one Y, impose reasonable requirements designed to promote the health, convenience, safety and general welfare of the community and to benefit the city or town.

Added by St.1953, c. 674, § 7. Amended by St.1960, c. 198; St.1962, c. 207, § 2.

§ 81BB. Right of appeal to superior court; costs, etc.

Any person, whether or not a party to the proceedings, aggrieved by a decision of a board of appeals under section eighty-one Y, or by any decision of a planning board concerning a plan of a subdivision, or by the failure of such a board to take final action concerning such a plan within the required time, or any municipal officer or board, may appeal to the superior court sitting in equity for the county in which the land concerned is situated; provided, that such appeal is entered within twenty days after such decision has been recorded in the office of the city or town clerk or within twenty days after the expiration of the required time as aforesaid, as the case may be, and notice of such appeal is given to such city or town clerk so as to be received within such twenty days. The court shall hear all pertinent evidence and determine the facts, and upon the facts so determined, shall annul such decision if found to exceed the authority of such board, or make such other decree as justice and equity may require. The foregoing remedy shall be exclusive, but the parties shall have all rights of appeal and exceptions as in other equity cases.

A city or town may provide any municipal officer or board with legal counsel for appealing, as provided in this section, a decision of a board of appeals or a planning board and for taking such other subsequent action as parties in other equity cases are permitted to take.

Costs shall not be allowed against the planning board or board of appeals unless it shall appear that such board acted with gross negligence or in bad faith.

All issues in any proceeding under this section may be advanced for speedy trial over other civil actions and proceedings.

Added by St.1953, c. 674, § 7. Amended by St.1955, c. 348; St.1957, c. 199, § 2.

§ 81CC. Powers of planning boards; entry on lands

Planning boards and their officers and agents may, as far as they deem it necessary in carrying out the subdivision control law, enter upon any lands and there make examinations and surveys and place and maintain monuments and marks.

Added by St.1953, c. 674, § 7.

§ 81DD. Application of law; damages

The subdivision control law shall not abridge the powers of the city council, of the selectmen, or any other municipal officer, in regard to public ways in any manner except as herein provided, and shall not authorize the taking of land nor authorize a city or town to lay out or construct any way which may be indicated on any plan of a subdivision until such way has been laid out as a public way in the manner prescribed by law; nor shall action under such law render a city or town liable for damages; provided, however, any person injured in his property by reason of the modification, amendment or rescission of the approval of a plan under section eighty-one W without his consent in writing, or by entry of his land not within the limits of a subdivision as shown on a preliminary or definitive plan submitted by him for approval, may recover the damages so caused under chapter seventy-nine. The modification, amendment or rescission of the approval of a plan shall not entitle any person to damages, unless and to the extent that he shall have changed his position or made expenditures in reliance upon such approval. No damages shall be awarded for the modification, amendment or rescission of the approval of a plan obtained as a result of material misrepresentation of facts, whether willful or otherwise, by the persons submitting the plan.

Added by St.1953, c. 674, § 7.

§ 81EE. Recordation; evidence that subdivision control law is in effect, etc.

Every board having on the first day of January, nineteen hundred and fifty-four, powers of subdivision control shall, within sixty days thereafter transmit to the register of deeds and the recorder of the land court a statement stating that in the opinion of such board the subdivision control law is in effect in such city or town, including a copy certified by the clerk of such city or town of the vote of the city council or of the town meeting under which the subdivision control law in the opinion of such board went into effect, together with the date thereof, or a reference to any special statute under which subdivision control was established, in such city or town. The register of deeds and the recorder of the land court shall enter such statement in the book which he is required to keep under section eighty-one X. Unless such statement is transmitted as herein provided within sixty days after said date, or the clerk of such city or town has previously notified the register of deeds and recorder of the land court of the establishment of a planning board under the provisions of law in effect prior to said date, and included in his notice a statement of the date of such establishment, the operation of the subdivision control law in and in respect to such city or town shall be suspended until the clerk of such city or town has notified the register of deeds and recorder of the land court that the subdivision control law is in effect in his city or town in the manner provided in section eighty-one N. The register of deeds and the recorder of the land court shall each enter such notice in his records in the manner provided in section eighty-one X. Any planning board having powers of subdivision control on the first day of January, nineteen hundred and fifty-four, shall, within sixty days thereafter, transmit to the register of deeds and recorder of the land court a certified copy of its rules and regulations relating to subdivision control, which shall be kept by him in the same manner as copies of rules and regulations thereafter adopted, and unless such copy is so transmitted, the operation of the subdivision control law in and with respect to such city or town shall be suspended until the board so transmits such copy.

Added by St.1953, c. 674, § 7.

§ 81FF. Application of subdivision control law on registered and unregistered land; jurisdiction of land court

So far as land which has not been registered in the land court is affected by the subdivision control law, recording of the plan of a subdivision in the registry of deeds before the subdivision control law was in effect in the city or town in which the subdivision was located shall not exempt the land within such subdivision from the operation of said law except with respect to lots which had been sold and were held in ownership separate from that of the remainder of the subdivision when said law went into effect in such city or town, and to rights of way and other easements appurtenant to such lots; and plans of subdivisions which were recorded in the registry of deeds and subdivisions made without the recording of a plan after said law had gone into effect in such city or town and before February first, nineteen hundred and fifty-two, without receiving the approval of the planning board of such city or town, shall have the same validity and effect as if the subdivision control law became effective in such city or town on February first, nineteen hundred and fifty-two, as above provided.

So far as land which has been registered in the land court is affected by said law, any plan of a subdivision which has been registered or confirmed by said court before February first, nineteen hundred and fifty-two, whether the subdivision control law was in effect in the city or town in which the subdivision was located or not, and whether the plan of the subdivision was approved by the planning board or not, shall have the same validity in all respects as if said plan had been so approved, but the land court shall not register or confirm a plan of a subdivision in a city or town in which the subdivision control law is in effect which has been filed on or after February first, nineteen hundred and fifty-two, unless it has first verified the fact that the plan filed with it has been approved by the planning board, or would otherwise be entitled if it had related to unregistered land, to be recorded in the registry of deeds. The land court shall have jurisdiction in so far as affects land registered or to be registered or confirmed under chapter one hundred and eighty-five, to determine whether the subdivision control law has been complied with, and shall verify before registering or confirming any plan of land in any city or town in which the subdivision control law is in effect, that the plan filed with it is entitled to be recorded in accordance with the subdivision control law, and every plan heretofore or hereafter registered or confirmed by the land court pursuant to said chapter one hundred and eighty-five shall for the purposes of the subdivision control law be deemed to be, and shall be invested with all the rights and privileges of, a plan approved pursuant to said law. In case of conditions imposed pursuant to section eighty-one R or eighty-one U of said law, and set forth or referred to by endorsement on the plan filed with it, the land court shall cause said conditions to be set forth or referred to on the plan prepared by it therefrom for registration or confirmation, or in the decree of registration or confirmation or certificate of title issued for the land shown thereon.

Added by St.1953, c. 674, § 7.

§ 81GG. Powers of planning boards established under prior law; severability provision

Any planning board having powers of subdivision control under corresponding provisions of earlier laws shall have all of the powers and be subject to all of the duties of a planning board with respect to subdivision control under sections eighty-one K to eighty-one FF, inclusive, without any further action by such city or town. If any provision of sections eighty-one K to eighty-one GG, inclusive, known as the subdivision control law, or in the administration thereof, shall be held to be unconstitutional, it shall not affect any other provision of said sections or the administration thereof.

Added by St.1953, c. 674, § 7.

WEIGHERS, MEASURERS AND SURVEYORS OF COMMODITIES

§ 85. Appointment; qualifications; tenure; removal

The mayor or the selectmen, on the written request of any person engaged in buying, selling or transporting goods or commodities which require weighing, surveying or measuring, shall appoint weighers, measurers or surveyors of such goods or commodities, who shall be sworn before entering upon their duties, shall serve for one year, and may be removed at any time by the appointing authority. At least one such weigher, measurer and surveyor in each town shall not be engaged in the business of buying, selling or transporting the goods or commodities weighed, measured or surveyed by him, but no person shall be ineligible for appointment because of sex or because of residence elsewhere than in the town where appointed, notwithstanding any provisions to the contrary in any general or special act.

CONSTABLES

§ 91. Appointment and removal in cities

In a city in which the city council accepts this section, or has accepted corresponding provisions of earlier laws, constables shall be appointed by the mayor for terms not exceeding three years. The mayor may, with the consent of the board of aldermen, remove a constable from office for gross misconduct.

Amended by St.1962, c. 89.

§ 91A. Appointment in towns

The selectmen in any town may from time to time appoint, for terms not exceeding three years, as many constables as they deem necessary.

Amended by St.1961, c. 354, § 2.

§ 91B. Appointments; qualifications; application; investigation

Constables shall not be appointed by mayors or selectmen under section ninety-one or ninety-one A except as hereinafter provided. A person desiring to be appointed as aforesaid shall make a written application therefor to the appointing authority stating his reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the city or town of his residence, one of whom shall be an attorney-at-law. The appointing authority shall also investigate the reputation and character of every applicant and his fitness for said office. The chief of police or other official having charge of the police shall upon request give the appointing authority all possible assistance in making such investigation. The office of constable shall be filled only by appointment of an applicant hereunder who is found by the appointing authority, after investigation as aforesaid, to be a person of good repute and character and qualified to hold said office.

Added by St.1933, c. 128.

§ 92. Service of civil process

A constable who has given bond to the town in a sum of not less than one thousand dollars, with sureties approved by the selectmen, conditioned for the faithful performance of his duties in the service of all civil processes committed to him, and has filed the same, with the approval of the selectmen endorsed thereon, with the town clerk, may within his town serve any writ or other process in a personal action in which the damages are not laid at a greater sum than two hundred dollars, and in replevin in which the subject matter does not exceed in value two hundred dollars, and any writ or other process under chapter two hundred and thirty-nine. A constable who has filed such a bond, in a sum not less than five thousand dollars, may, within his town, also serve any such writ or other process in which the damages are laid at a sum not exceeding eighteen hundred dollars, and any process in replevin in which the subject matter does not exceed in value eighteen hundred dollars.

Amended by St.1965, c. 228; St.1968, c. 74; St.1971, c. 1061; St.1972, c. 237; St.1978, c. 478, § 33; St.1979, c. 311.

§ 94. Powers and duties

Constables may serve the writs and processes described in section ninety-two and warrants and processes in criminal cases, although their town, parish, religious society or district is a party or interested. They shall have the powers of sheriffs to require aid in the execution of their duties. They shall take due notice of and prosecute all violations of law respecting the observance of the Lord's day, profane swearing and gaming. They shall serve all warrants and other processes directed to them by the selectmen of their town for notifying town meetings or for other purposes. They may serve by copy, attested by them, demands, notices and citations, and their returns of service thereof shall be prima facie evidence; but this provision shall not exclude the service thereof by other persons.

POLICE OFFICERS

§ 98. Powers and duties

The chief and other police officers of all cities and towns shall have all the powers and duties of constables except serving and executing civil process. They shall suppress and prevent all disturbances and disorder. They may carry within the commonwealth such weapons as the chief of police or the board or officer having control of the police in a city or town shall determine; provided, that any law enforcement officer of another state or territory of the United States may, while on official business within the commonwealth, carry such weapons as are authorized by his appointing authority. They may examine all persons abroad whom they have reason to suspect of unlawful design, and may demand of them their business abroad and whither they are going; may disperse any assembly of three or more persons, and may enter any building to suppress a riot or breach of peace therein. Persons so suspected who do not give a satisfactory account of themselves, persons so assembled and who do not disperse when ordered, and persons making, aiding and abetting in a riot or disturbance may be arrested by the police, and may thereafter be safely kept by imprisonment or otherwise unless released in the manner provided by law, and taken before a district court to be examined and prosecuted.

Whoever is arrested and charged with any offense committed during a riot, disturbance or mass demonstration may be fingerprinted, according to the system of the bureau of identification in the department of public safety and may be photographed.

If a police officer stops a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If he finds such weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall return it, if lawfully possessed, or he shall arrest such person.

Amended by St.1953, c. 319, § 9; St.1954, c. 162, § 1; St.1957, c. 688, § 1; St.1967, c. 368, §§ 1, 2; St.1970, c. 181.

INSPECTOR OF HEALTH

§ 102. Appointment and duties

If a town votes under section twenty-one to have its selectmen act as a board of health, the selectmen may appoint an inspector of health, who shall assist the selectmen in the performance of their duties as such board.

§ 102A. Appointment in towns under three thousand population

In any town of not exceeding three thousand inhabitants which votes under section twenty-one to have its selectmen act as a board of health and which accepts this section by vote in town meeting, the selectmen may appoint the school physician to be inspector of health, with the duties set forth in section one hundred and two. Such appointment shall not bar the school physician from the general practice of his profession.

§ 102B. Appointment in towns of 5,000 or more inhabitants

In any town of five thousand inhabitants or more which accepts this section, the board of health shall appoint a full-time inspector of health who shall devote his time to the enforcement of the laws and regulations related to public health and such other duties as may be assigned by said board. This section shall not apply to any town which has formed a district pursuant to section twenty-seven A of chapter one hundred eleven.

Added by St.1973, c. 281.

TOWN PHYSICIAN

§ 106A. Appointment in certain towns

In any town of not exceeding three thousand inhabitants which accepts this section by vote in town meeting, the selectmen may appoint the school physician to be the town physician. Such appointment shall not bar the school physician from the general practice of his profession.

TERM OF OFFICE AND COMPENSATION OF TOWN OFFICERS

§ 107. Oath of office; beginning of term

A person who is elected town clerk shall be sworn either by the moderator or by a justice of the peace, and shall enter upon the performance of his duties on the seventh day succeeding his election or as soon thereafter as he is qualified and shall hold office during the term fixed by law, which shall begin on the seventh day succeeding his election, and until another person is qualified in his stead. Every person elected as a moderator of a town or district or to any other town office designated by name in section one, or as an officer of a district, which district includes two or more towns, before entering upon his official duties shall be sworn to the faithful performance thereof either by the town clerk in the case of a moderator, and in all other cases by the moderator, or by the town clerk in the town in which he resides, and, unless other provision is specifically made by law, shall enter upon the performance of his duties on the day after his election, or as soon thereafter as he is qualified, and shall hold office during the term fixed by law, which shall begin on the day after said election, and until another person is qualified in his stead. Every other elected member and every appointed member of every board or commission of a town, and every other elected officer and every appointed officer of a town, shall also, before entering upon his official duties, be sworn to the faithful performance thereof.

Amended by St.1953, c. 44; St.1955, c. 123; St.1964, c. 63.

§ 108. Compensation

The salary and compensation of all elected officers of a town shall be fixed annually by vote of the town except as otherwise provided by law. Except as provided in section four A and section one hundred and eight A, and except in any city in which salaries and wages are fixed by special law or by ordinance in accordance with the provisions of any general or special law, all boards or heads of departments of a town shall, as soon as may be after the passage of the annual budget, fix the salary or compensation of all officers or employees appointed or employed by them, subject to the provisions of section thirty-one of chapter forty-four. The provisions of this section shall be operative notwithstanding the provisions of sections thirteen and thirty-four of said chapter forty-four. A city may by ordinance prescribe that all fees, charges or commissions allowed by law to any officer thereof shall be paid into the city treasury and belong to the city, and in such case shall pay such officer such compensation as the city council may determine.

Amended by St.1947, c. 540, § 1; St.1969, c. 849, § 44; St.1971, c. 766, § 10.

§ 108A. Classification of positions; compensation plans; rules and regulations

A city by ordinance and a town by by-law may establish, and from time to time amend, a plan classifying any or all positions, other than those filled by popular election and those under the directior and control of the school committee, into groups and classes doing substantially similar work or having substantially equal responsibilities. Such city or town may in like manner or in a city by vote of the city council, subject to the provisions of its charter, and in a town by vote of the town at a town meeting, establish, and from time to time amend, a plan establishing minimum and maximum salaries to be paid to employees in positions so classified, and such salary plan may provide for the attainment of such maximum salaries by periodical step-rate increases based on length of service. Nothing in this section shall be construed to conflict with the provisions of chapter thirty-one. Any by-law adopted under the provisions of this section shall not be subject to section thirty-two of chapter forty.

In any city or town for which a classification plan has been established in accordance with the provisions of paragraph (*b*) of section five of said chapter thirty-one, the city or town affected thereby shall, within one year after receiving notice from the administrator of the effective date of such classification plan or of said amendment or change, establish, amend or change, as the case may be, a compensation plan with a minimum and maximum salary for each group of positions. No rule or regulation or change in rules or regulations shall be promulgated as a part of any such compensation plan except after a public hearing held not less than two weeks nor more than two months after notice thereof shall have been posted in a conspicuous place in the city or town hall and in at least five other convenient and conspicuous places and shall also have been published on one or more days in one or more newspapers having a circulation in the city or town. Every notice posted shall contain, or have subjoined or annexed thereto, a copy of the proposed rule or regulation. If such rule or regulation or change therein is to be adopted by vote of the town or by by-law, the publication of the proposed rule, regulation or change in the warrant for the town meeting shall be deemed to satisfy the requirements of this paragraph.

Added by St.1947, c. 540, § 2. Amended by St.1948, c. 351; St.1960, c. 87; St.1969, c. 12, § 2; St.1969, c. 849, § 45; St.1971, c. 766, § 10; St.1978, c. 393, § 20.

§ 108C. By-laws pertaining to administration of personnel; consolidation

A town may consolidate, in a single chapter or article, all provisions of its by-laws pertaining to the administration of its personnel, including, among other things, the compensation plan established pursuant to paragraph (*b*) of section five of chapter thirty-one, the plans established pursuant to section one hundred and eight A of this chapter, and any by-laws adopted pursuant to section twenty-one A of chapter forty, and may provide by by-law for the establishment of a personnel board or other agency for the purpose of administering said plans or other provisions of its by-laws pertaining to personnel, determining any questions arising thereunder, and advising the town in any matters pertaining thereto; provided, however, such consolidated by-law shall not be subject to the approval of the attorney general as provided in section thirty-two of chapter forty.

Added by St.1954, c. 295, § 2. Amended by St.1978, c. 393, § 21.

§ 108J. Equal pay of male and female employees

In any city or town which accepts this section, male and female employees in classified civil service employed in the same grades who, in the opinion of the personnel administrator, are doing the same type of work with the same preparation and training shall receive equal pay.

Added by St.1966, c. 129. Amended by St.1974, c. 835, § 140.

§ 109. Resignation; notice; residence requirements

No resignation of a town or district officer shall be deemed effective unless and until such resignation is filed with the town or district clerk or such later time certain as may be specified in such resignation. Upon receipt of a resignation the clerk shall notify the remaining members, if the resignation is received from a board of two or more members, and he shall further notify the executive officers of the town or district and such notification shall include the effective date of the resignation. Unless otherwise provided by general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office in a town or district, be a resident of such town or district; provided, however, that if an appointed town or district officer is required to become a resident within a period of time specified at the time of his appointment by the board or officer making the appointment but fails to do so within the time specified, or if an elected or appointed town or district officer removes from the town or district in which he holds his office, he shall be deemed to have vacated his office.

Amended by St.1960, c. 592, § 2; St.1964, c. 54; St.1970, c. 381; St.1971, c. 151, § 2.

§ 109A. Fidelity bonds; payment of premiums

Every officer or employee of a city, town or district required to furnish a fidelity bond with a surety or sureties shall furnish a bond with a surety company authorized to transact business in the commonwealth, as surety. The premium on such bond shall in every case be paid by the city, town or district.

ASSISTANCE TO DISASTER VICTIMS

§ 125. Temporary housing assistance plans

The city manager in cities having a plan D or E charter, the mayor in all other cities, and the board of selectmen in towns shall co-ordinate a plan in conjunction with the housing authority, if any, to assist persons who have been deprived of living quarters because of fire or other disaster to obtain temporary living quarters.

Added by St.1972, c. 556.

TENURE TO INCUMBENTS OF CERTAIN APPOINTIVE OFFICES

§ 126. Definitions

The following words, as used in sections one hundred and twenty-six to one hundred and thirty-two, inclusive, shall have the following meanings, unless a different meaning is plainly required by the context:

"Application statement", a writing signed by an incumbent in an appointive office which shall include a request for tenure in said office, the name, residential address and title of the office of such incumbent, and the number of years such incumbent has held such office continuously. The writing may also be signed by a department head requesting tenure for members of his department who have held offices for five or more consecutive years.

"Appointive office", any public office other than an office which is required to be filled by popular vote periodically in a city, town or district, but not including an office within the classified civil service, an office on a board, commission or committee which has two or more members, a teacher or officer in a school department or system, any office which is filled by appointment made by the governor, or any office in an authority, board, commission or other public body which is a separate corporation from the city, town or district in which it exercises powers.

"District", a fire, water, sewer, light, improvement or other district with such powers which is wholly contained within a city or town.

"Tenure", the holding of an appointive office under the provisions of sections one hundred and twenty-seven to one hundred and thirty-two, inclusive, in a city, town or district without the necessity of periodic reappointment.

The titles of particular municipal officers as used in these said sections shall be construed to mean officers, however titled, who exercise powers similar to those exercised by officers holding titles so used.

Added by St.1973, c. 170.

§ 127. Eligibility to apply for tenure; offices excepted; restrictions; duration of tenure; removal for cause

Any person who has held an appointive office in a city, town or district for at least five consecutive years shall be eligible to apply for tenure in such office pursuant to the provisions of sections one hundred and twenty-six to one hundred and thirty-two, inclusive, with the exception of the following offices:—city or town manager, executive secretary to the selectmen, city or assistant city solicitor, town or assistant town counsel, and legislative counsel. Any person having tenure in a city or town office who is elected to or accepts an appointment to any of the foregoing offices, whether or not to fill a vacancy, shall thereupon lose such tenure. Any person having tenure in an appointive city or town office may not apply for tenure in any other city or town office, nor may any person apply for tenure in more than one city or town office at any one time, except that a person may apply for tenure as city clerk and city treasurer or town clerk and town treasurer, or, if such person has tenure in either of such offices, he may apply for tenure in the other office; provided that both such offices are appointive offices. If any person is unable to so apply for tenure by reason of holding one of the offices specified above or loses his tenure by reason of being elected or appointed to any such office, he may, following the termination of his service in such office, then apply for tenure in an appointive city or town office. Any person granted tenure of office under these provisions shall, notwithstanding any contrary provision of general or special laws, hold office during good behavior until he has attained age sixty-five unless incapacitated by physical or mental disability from performing the duties thereof, but may be removed for cause after a hearing as provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.

Added by St.1973, c. 170. Amended by St.1978, c. 393, § 26.

§ 128. City offices; application statement; filing; approval procedure; denial, re-application time limit

Any person applying for tenure in an appointive city office shall file an application statement with the city clerk and shall deliver copies thereof in hand or send same by registered or certified mail, return receipt requested, to every city officer, or every member of any city board, commission or other body that is required to recommend, make, approve or confirm the applicant's office. Upon receipt of the application statement, the city clerk shall post a copy thereof in his office. The applicant shall forthwith and at his own expense cause a copy of his said statement to be published in a newspaper of general circulation in the city once a week for three consecutive weeks. Not less than thirty days after said posting and not less than seven days following the applicant's compliance with the publication requirement, the city council shall vote to approve or deny said application. If the city council approves said application, it shall then be presented to the mayor for his approval or denial. If the mayor approves the said application, at least one hundred and twenty days prior to the next municipal election, the city clerk shall cause to be printed on the ballot for such municipal election a question in substantially the following form:

Shall (name of applicant), incumbent in the position or positions of (title of office), be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?

Yes.	
No.	

If a majority of the votes cast in response to the question is in favor of granting tenure, the applicant shall thereupon have tenure in such office. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by the vote of the city council, by the mayor or by vote of the electorate at a municipal election, the applicant shall be ineligible to apply for tenure in his said office for a period of two years following such denial.

Added by St.1973, c. 170.

§ 129. Town offices; application statement; filing; approval procedure; denial, re-application time limit

Any person applying for tenure in an appointive town office shall file an application statement with the town clerk and shall deliver copies thereof in hand or send same by registered or certified mail, return receipt requested to each selectman. Following receipt of such notice, the selectmen shall vote to approve or deny said application. If the board of selectmen vote to approve said application, the town clerk, at least one hundred and twenty days prior to the next town election, shall post a copy of the said application statement and the selectmen's written approval on the town bulletin board or such other place used for the posting of public notices within the town hall premises. The selectmen shall then cause to be included in the town warrant for said election a question in substantially the following form:

> Shall (name of applicant), incumbent in the position or positions of (title of office), be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?

Yes.	
No.	

If a majority of the votes cast in response to the question is in favor of granting tenure, the applicant shall thereupon have tenure in such office. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by a vote of the board of selectmen or by vote of the electorate at the town election, the applicant shall be ineligible to apply for tenure in his said office for a period of two years following such denial.

Added by St.1973, c. 170.

§ 130. Applicability of town tenure provisions to districts

The provisions of section one hundred and twenty-seven and sections one hundred and twenty-nine to one hundred and thirty-two, inclusive, as they apply to towns, town offices and town officers shall be applicable to districts and for this purpose the word "selectmen" shall be construed to mean "commissioner" or "member of the prudential committee", and other references to specific town offices or officers shall be construed as meaning the equivalent office or officer, if any, in a district. For the purpose of determining whether a person is eligible to apply for tenure in a town office or in a district office and for the purpose of determining whether a person has lost his tenure in such an office, offices in a district shall be deemed to be offices in the town in which they are located.

Added by St.1973, c. 170.

§ 131. City or town offices; application statement by head of department for tenure of its members; filing; approval procedure; denial, re-application time limit

Any department head of a city or town applying for tenure for members of his department who have served for five consecutive years or more shall file an application statement with the city or town clerk.

In a city, the department head shall deliver copies of said application statement in hand or send same by registered or certified mail, return receipt requested, to the mayor and to each member of the city council. Upon receipt of the application statement, the city clerk shall post a copy thereof in his office. The department head shall forthwith and at his own expense cause a copy of his said statement to be published in a newspaper of general circulation in the city once a week for three consecutive weeks. Not less than thirty days after said posting and not less than seven days following the applicant's compliance with the publication requirement, the city council shall vote to approve or deny said application. If the city council approves said application, it shall then be presented to the mayor for his approval or denial. If the mayor approves the said application, at least one hundred and twenty days prior to the next municipal election, the city clerk shall cause to be printed on the ballot for such municipal election a question in substantially the following form:

Shall members of (name of department) who have served continuously for five years or more be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?

Yes.	
No.	

If a majority of the votes cast in response to the question is in favor of granting tenure, any member of such department who has served continuously for five years shall thereupon have tenure in said department. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure for members of his department is denied. If the application statement is denied either by vote of the city council, by the mayor or by vote of the electorate at a municipal election, the applicant shall be ineligible to apply for tenure for members of his department for a period of two years following such denial.

In a town, the department head shall deliver copies of said application statement in hand or send same by registered or certified mail, return receipt requested, to each selectman. Following receipt of such notice, the selectmen shall vote to approve or deny said application. If the board of selectmen vote to approve said application, the town clerk, at least one hundred and twenty days prior to the next town election, shall post a copy of the said application statement and the selectmen's written approval on the town bulletin board or such other place used for the posting of public notices within the town hall premises. The selectmen shall then cause to be included in the town warrant for said election a question in substantially the following form:

Shall members of (name of department) who have served continuously for five years or more be granted tenure pursuant to sections one hundred and twenty-six to one hundred and thirty-two, inclusive, of chapter forty-one of the General Laws?

Yes.	
No.	

If a majority of the votes cast in response to the question is in favor of granting tenure, any member of such department who has served continuously for five years shall thereupon have tenure in said department. If less than a majority of such votes cast is in favor of granting tenure, the applicant's request for tenure is denied. If the application statement is denied either by vote of the board of selectmen or by vote of the electorate at a town election, the applicant shall be ineligible to apply for tenure for members of his department for a period of two years following such denial.

Added by St.1973, c. 170.

§ 132. Tenure limitations

The tenure provisions of sections one hundred and twenty-six to one hundred and thirty-one, inclusive, shall be limited as follows:

(*a*) Said provisions shall not apply to persons whose tenure in office is terminated by a law enacted subsequent to his commencement of tenure.

(*b*) Said provisions shall not prevent abolition of any municipal office or the transfer of any of the powers and duties of any office.

(*c*) Said provisions shall not prevent termination of tenure upon an appointive office becoming elective. Any person's length of service in an elective office which becomes appointive, however, may be credited to his eligibility period for tenure if he succeeds himself in such office.

(*d*) Said provisions shall not extend the time at which an officer is otherwise required to retire.

(*e*) Said provisions shall not waive residency requirements in determining tenure eligibility.

Added by St.1973, c. 170.

CHAPTER 44

MUNICIPAL FINANCE

MUNICIPAL INDEBTEDNESS

Sec.
6A. Power to borrow in anticipation of reimbursement by commonwealth
7. Cities and towns; purposes for borrowing money within debt limit
8. Cities and towns; purposes for borrowing money outside debt limit
9. Districts; right to borrow money; purposes; amount

MUNICIPAL INDEBTEDNESS

§ 6A. Power to borrow in anticipation of reimbursement by commonwealth

If a town has an agreement with the department of public works, or the county commissioners, or both, whereby said department, or said county commissioners, allot such town a sum of money for the purpose of constructing or repairing a highway, or installing traffic control devices or other devices appurtenant thereto, and is required primarily to pay that proportion of the expense for which reimbursement is to be received from the commonwealth or county or both, such reimbursement first having been agreed upon by said department or the county commissioners, for the purpose of providing the necessary funds to meet the expense for which reimbursement is to be made the treasurer of the town may, with the approval of the selectmen, incur debt outside the debt limit and issue notes therefor for a period not exceeding two years from their dates; and the proceeds of such reimbursement shall be applied to the discharge of the loan.

If a city, town or district has been allotted a sum of money by the division of water pollution control in the department of environmental quality engineering for the purpose of water pollution control, and is required primarily to pay that proportion of the expense for which reimbursement is to be received from the commonwealth, such reimbursement first having been agreed upon by said division, in order to provide the necessary funds to meet the expense for which reimbursement is to be made, the treasurer of the city may, with the approval of the official whose approval is required by the city charter in the borrowing of money, the treasurer of the town may, with the approval of the selectmen, and the treasurer of the district may, with the approval of the prudential committee, if any, otherwise the commissioners, incur debt outside the debt limit and issue notes therefore for a period not exceeding two years from their dates, and may refund the same from time to time; provided, however, that no loan shall be so refunded unless the auditor, in the case of a city, or the accountant or chief accounting officer in the case of a town or district which has such an officer, otherwise the treasurer, shall certify in a writing filed in the office of the treasurer, where it shall be open to inspection by the public, that at the time such loan is refunded, the city, town or district remains entitled to receive reimbursement from the grant in an amount at least equal to the amount of the refunding loan. The proceeds of such reimbursement shall be applied to the discharge of the loan, without the necessity of further appropriation. In the event the city, town or district shall no longer be entitled to receive reimbursement from the grant in an amount sufficient to pay all or any portion of a loan issued under this paragraph at the time such loan matures, the loan shall be paid from revenue funds of the city, town or district to the extent it can no longer be refunded under this section. A payment made by a city, town or district as provided in the preceding sentence shall be reported by the auditor or accountant of the city, town or district, or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor.

If a city, town or district has been allotted a sum of money by the department of environmental quality engineering for the purpose of constructing a drinking water filtration plant for the treatment of a public water supply system owned by said city, town or district, and if said city, town or district is required to pay that proportion of the expense for which reimbursement is to be received from the commonwealth, such reimbursement first having been agreed upon by said department, in order to provide the necessary funds to meet the expense for which reimbursement is to be made, the treasurer of the city may, with the approval of the official whose approval is required by the city charter in the borrowing of money, the treasurer of the town may, with the approval of the selectmen, and the treasurer of the district may, with the approval of the prudential committee, if any, otherwise the commissioners, incur debt outside the debt limit and issue notes therefor for a period not exceeding two years from their dates, and may refund the same from time to time; provided, however, that no loan shall be so refunded unless the auditor, in the case of a city, or the accountant or chief accounting officer in the case of a town or district which has such an officer, otherwise the treasurer, shall certify in a writing filed in the office of the treasurer, where it shall be open to inspection by the public, that at the time such loan is refunded, the city, town or district remains entitled to receive reimbursement from the grant in an amount at least equal to the amount of the refunding loan. The proceeds of such reimbursement shall be applied to the discharge of the loan, without the necessity of further appropriation. In the event the city, town or district shall no longer be entitled to receive reimbursement from the grant in an amount sufficient to pay all or any portion of a loan issued under this paragraph at the time such loan matures, the loan shall be paid from revenue funds of the city, town or district to the extent it can no longer be refunded under this section. A payment by a city, town or district as provided in the preceding sentence shall be reported by the auditor or accountant of the city, town or district, or other officer having similar duties, or by the treasurer if there be no such officer, to the assessors, who shall include the amount so reported in the determination of the next annual tax rate, unless the city, town or district has otherwise made provision therefor.

Amended by St.1962, c. 607, § 2; St.1968, c. 598, § 1; St.1969, c. 428, § 2; St.1973, c. 1140, § 1; St.1975, c. 706, § 103; St.1978, c. 537, § 1; St.1979, c. 668.

§ 7. Cities and towns; purposes for borrowing money within debt limit

Cities and towns may incur debt, within the limit of indebtedness prescribed in section ten, for the purposes hereinafter set forth, and payable within the periods hereinafter specified:

(1) For the construction or reconstruction of surface drains, sewers, sewerage systems and sewage treatment and disposal facilities, thirty years.

(24) For the purpose of closing out a landfill area, opening a new landfill area, or making improvements to an existing landfill area, fifteen years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental quality engineering and the approval of said department has been granted therefor.

Debts may be authorized under this section only by a two-thirds vote.

Amended by St.1936, c. 224, § 5; St.1946, c. 358, §§ 13, 14; St.1947, c. 101; St.1947, c. 207, §§ 1, 2; St.1948, c. 275, §§ 3, 4; St.1948, c. 383; St.1951, c. 54; St.1951, c. 181, §§ 1, 2; St.1951, c. 282, §§ 1, 2; St.1952, c. 38; St.1953, c. 100; St.1955, c. 85, § 2; St.1955, c. 716, § 2; St.1956, c. 596, § 2; St.1957, c. 219; St.1959, c. 73, § 2; St.1962, c. 380; St.1963, c. 81; St.1964, c. 28; St.1965, c. 206, § 1; St.1965, c. 581, § 1; St.1966, c. 63, § 3; St.1966, c. 234, § 1; St.1967, c. 883, § 2; St.1968, c. 228, § 1; St.1969, c. 481, §§ 1 to 3; St.1969, c. 849, §§ 49, 50; St.1970, c. 63; St. 1970, c. 79, §§ 1, 2; St.1971, c. 54; St.1971, c. 766, § 11; St.1973, c. 57; St.1973, c. 401; St.1974, c. 88, § 1; St.1975, c. 184; St.1976, c. 11, § 1;

St.1976, c. 189; St.1976, c. 404; St.1977, c. 121; St.1977, c. 232, § 2; St.1978, c. 119, §§ 2, 3.

§ 8. Cities and towns; purposes for borrowing money outside debt limit

Cities and towns may incur debt, outside the limit of indebtedness prescribed in section ten, for the following purposes and payable within the periods hereinafter specified:

(4) For the construction or enlargement of reservoirs, and the construction of filter beds, standpipes, buildings for pumping stations, including original pumping station equipment, and buildings for water treatment, including original equipment therefor, and the acquisition of land or any interest in land necessary in connection with any of the foregoing, twenty years.

(4A) For remodeling, reconstructing, or making extraordinary repairs to reservoirs and filter beds, such amounts as may be approved by the emergency finance board, ten years; provided, however, that no indebtedness shall be incurred hereunder until plans relating to the project shall have been submitted to the department of environmental quality engineering, and the approval of said department has been granted therefor.

Amended by St.1938, c. 172, § 5; St.1939, c. 457; St.1941, c. 83; St.1946, c. 358, § 15; St.1947, c. 298, §§ 3, 4; St.1952, c. 123, §§ 1, 2; St.1954, c. 106; St.1957, c. 224; St.1957, c. 431; St.1958, c. 70, § 1; St.1958, c. 383, §§ 1, 2; St.1960, c. 592, § 6; St.1962, c. 672, §§ 2, 3; St.1963, c. 82; St.1963, c. 347, § 1; St.1964, c. 736, § 1; St.1965, c. 68; St.1965, c. 98; St.1966, c. 60; St.1967, c. 31; St.1967, c. 160, § 2; St.1967, c. 883, § 3; St.1968, c. 23, §§ 2 to 7; St.1969, c. 481, § 4; St.1969, c. 635; St. 1970, c. 55; St.1972, c. 761; St.1973, c. 933, §§ 2, 3; St.1974, c. 41; St. 1978, c. 119, § 4.

§ 9. Districts; right to borrow money; purposes; amount

Districts may by a two thirds vote authorize the incurring of debt for purposes prescribed, and payable within the periods specified, by sections seven and eight, so far as they are authorized by law to make expenditures for the purposes mentioned therein, and the amounts of debt so incurred shall be limited to the amounts prescribed for towns by sections eight and ten; provided that debt of any such district incurred for any purpose mentioned in clause (3), (4), (4A), (5), (6), (7), or (7A) of section eight under any special act heretofore or hereafter enacted shall not be included in the amount of debt which is subject to the limit prescribed by said section eight for debt for such purposes. The limitation contained in the first paragraph of section seven shall be applicable to loans authorized by districts for purposes provided under section seven.

In the fiscal year of organization of a newly established district, whether established under general or special law, the borrowing capacity for purposes specified in section seven and limited in amount by section ten, and for purposes specified in section eight, shall be based on an amount determined by applying to the equalized valuation of the town in which the district is located the same ratio which the assessors' valuation of the taxable property of the district for that year bears to the assessors' valuation of the taxable property of the town for the same year. In the case of a newly established district which is located in two or more towns, said borrowing capacity shall be based on the total amount determined by applying to the equalized valuation of each of the towns in which any part of the district is located the same ratio which the assessors' valuation of the taxable property of the district in the respective towns for that year bears to the assessors' valuation of the taxable property of said town for the same year.

Amended by St.1941, c. 376; St.1946, c. 384, § 1; St.1947, c. 298, § 5; St.1950, c. 169; St.1967, c. 46, § 2; St.1968, c. 23, § 8; St.1969, c. 849, § 51.

CHAPTER 45

PUBLIC PARKS, PLAYGROUNDS AND THE PUBLIC DOMAIN

THE PUBLIC DOMAIN

Sec.
19. Acquisition of property; use
21. City or town forests; management

THE PUBLIC DOMAIN

§ 19. Acquisition of property; use

A town, by a two thirds vote at an annual town meeting, or a city, by a two thirds vote of the city council, may determine to take or purchase land within its limits, which shall be a public domain, and may appropriate money and accept gifts of money and land therefor. Such public domain shall be devoted to the culture of forest trees, or to the preservation of the water supply of such city or town, and the title thereto shall vest in the city or town in which it lies, except that cities or towns owning land within the territorial limits of other cities and towns for water supply purposes may, as herein provided, convert such land into a public domain and retain the title thereto.

§ 21. City or town forests; management

The management and care of that portion of the public domain known as the city or town forest, excepting lands held within the watershed of any pond, stream, reservoir, well or other water used by a city or town as a source of water supply, in a town shall be in charge of a special town forest committee appointed by the selectmen or, if the town so votes, by the conservation commission of said town, and in a city shall be in charge of a forester or of such other board or officer as the mayor and city council may determine. The special town forest committee shall be composed of three members who shall choose their own chairman, and shall serve without compensation. One member of said committee shall be appointed each year for a term of three years, except that, when first appointed, one shall be appointed for a term of three years, one for a term of two years and one for a term of one year.

Amended by St.1971, c. 893, § 4.

CHAPTER 46

RETURN AND REGISTRY OF BIRTHS, MARRIAGES AND DEATHS

Sec.

1. Certificates of birth, marriage and death; contents; residence, defined
1A. Birth records of abandoned children or foundlings
1B. Filing reports of out-of-state births
1C. Filing reports of out-of-state deaths
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Sec.
12. Certified copies of birth and death records; transmission to nonresident parents or next of kin; exceptions
13. Correction of records
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27. Clerks; penalty for neglecting required duties
28. Administration of oaths
29. Attestation of certificates
30. Alteration, forgery or counterfeiting; penalty

§ 1. Certificates of birth, marriage and death; contents; residence, defined

Each town clerk shall receive or obtain and record the following facts relative to births, marriages and deaths in his town:

In the record of births, date of record, date of birth, place of birth, name of child, his sex, names, places of birth and residence of his parents, including the maiden name of the mother and occupation of the father. In the record of birth of an illegitimate child, the name of and other facts relating to the father shall not be recorded except on the written request of both father and mother.

In the record of marriages, date of record, date of marriage, place of marriage, name, residence and official station of the person by whom solemnized, names and places of birth of the parties married, the name of each after marriage pursuant to section one D, residence of each, age of each, the number of the marriage (as first or second) and if previously married, whether widowed or divorced, the occupation of each and the birth-given names of their parents.

In the record of deaths, date of record, date of death, name of deceased, sex, color, condition (whether single, widowed, married or divorced), supposed age, residence, occupation, place of death, place of birth, names and places of birth of the parents, maiden name of the mother, disease or cause of death, defined so that it can be classified under the international classification of causes of death, place of burial, name of the cemetery, if any, and if deceased was a veteran, as defined in section ten of chapter forty-six, a recital as required by section ten, and if deceased was a married or divorced woman or a widow, her maiden name and the name of her husband. The word "residence", as used in this section, shall be held to include the name of the street and number, if any, of the house.

Amended by St.1933, c. 280, § 1; St.1941, c. 51; St.1954, c. 627, § 23; St.1968, c. 42, § 1; St.1968, c. 84, § 1; St.1968, c. 358, § 1; St.1971, c. 254; St.1977, c. 161; St.1977, c. 869, § 1.

§ 1A. Birth records of abandoned children or foundlings

Each town clerk shall receive or obtain and record in the record of births facts relative to births of abandoned children and foundlings found within the limits of his town and the identity of whose parents is unknown. The facts relative to births required by section one shall, so far as possible, be set forth in records subject to this section, except that the town wherein such child or foundling was found shall be recorded as the place of birth, and that the date recorded as the date of birth shall be that determined by the commissioner of social services. Such a record shall constitute the birth record of such child or foundling.

Added by St.1939, c. 61, § 1. Amended by St.1978, c. 552, § 14.

§ 1B. Filing reports of out-of-state births

Any resident of the commonwealth who is the parent of a child born outside the commonwealth may personally present to the town clerk of the town where such parent was domiciled at the time of such birth, or in the case of an adopted child, at the time of such adoption, an original certificate or other written evidence of the birth, and a certified copy of the adoption decree if adopted, or a duly authenticated photostatic copy thereof. The town clerk may file such documents as evidence establishing such birth or adoption, or may make a copy thereof, which he shall attest as a true copy, and which he may then file as such evidence.

If such evidence is not, in the opinion of the town clerk, sufficient to establish such birth or adoption, and he refuses to file the same, a judge of probate in the county where such town lies may, on petition and after a hearing at which the clerk shall have an opportunity to be heard, order him to receive such certificate, written evidence or photostatic copy as sufficient evidence to establish such birth or adoption, whereupon such clerk shall file the same.

Added by St.1952, c. 72. Amended by St.1965, c. 12, § 1; St.1975, c. 712.

§ 1C. Filing reports of out-of-state deaths

The spouse or heirs at law of any resident of this commonwealth who dies outside the commonwealth may personally present to the town clerk of the town where such person was domiciled at the time of his death an original certificate or other written evidence of the same, or a duly authenticated photostatic copy thereof. The town clerk may file such certificate, written evidence or photostatic copy as evidence establishing such death, or may make a copy thereof, which he shall attest as a true copy, and which he may then file as such evidence.

If such certificate, written evidence or photostatic copy is not, in the opinion of the town clerk, sufficient to establish such death, and he refuses to file the same, a judge of probate in the county wherein such town lies may, on petition and after a hearing at which the clerk shall have an opportunity to be heard, order him to receive such certificate, written evidence or photostatic copy as sufficient evidence to establish such death, whereupon such clerk shall file the same.

Added by St.1952, c. 72. Amended by St.1965, c. 12, § 2.

§ 1D. Adoption of surname upon marriage

Each party to a marriage may adopt any surname, including but not limited to the present or birth-given surname of either party, may retain or resume use of a present or birth-given surname, or may adopt any hyphenated combination thereof.

Added by St.1977, c. 869, § 2.

§ 2. Separate registries for births, deaths and marriages

Separate indexes of births, marriages and deaths shall be kept, and each entry shall be numbered in its order. The town clerk shall preserve all returns of births, marriages and deaths and shall conveniently arrange them for examination. He may record in separate columns the facts of such births, marriages and deaths.

Amended by St.1968, c. 42, § 2.

§ 2A. Disclosure of information about vital statistics; conditions

Examination of records and returns of illegitimate births, or abnormal sex births, or fetal deaths, or of the notices of intention of marriage and marriage records in cases where a physician's certificate has been filed under the provisions of section twenty A of chapter two hundred and seven, or those of illegitimate persons, or of copies of such records in the department of public health, shall not be permitted except upon proper judicial order, or upon request of a person seeking his own birth or marriage record, or his attorney, parent, guardian, or conservator, or a person whose official duties, in the opinion of the town clerk or the commissioner of public health, as the case may be, entitle him to the information contained therein, nor shall certified copies thereof be furnished except upon such order, or the request of such person. The provisions of this section shall not apply to such records, returns or notices recorded or filed prior to January first, eighteen hundred and forty-one or to such copies thereof.

Added by St.1933, c. 279. Amended by St.1937, c. 78, § 1; St.1939, c. 269, § 1; St.1954, c. 324; St.1960, c. 48, § 1; St.1965, c. 10; St.1976, c. 486, § 4.

§ 3. Physician's record of birth; illegitimate children; out of hospital birth

Every physician, or hospital medical officer registered under section nine of chapter one hundred and twelve, in this chapter called officer, shall keep a record of the birth of every child in cases of which he was in charge, showing the date, the place of birth, the sex and the name, if any, of the child, the name, age and birthplace of each parent, the occupation of the father, the maiden name and residence, (including street and number if any) of the mother, and the name of the physician or officer, if any, attending the birth. If the child is illegitimate, the name of and other facts relating to the father shall not be set forth. If an illegitimate child shall have become legitimate by the intermarriage of his parents and the acknowledgement of his father, as provided in section seven of chapter one hundred and ninety, prior to the filing of such report with said clerk or registrar, such report shall read, in all respects, as if such child had been born in lawful wedlock.

If a birth occurs in a hospital, or en route to a hospital, or if a birth occurs elsewhere and the mother and child are admitted to a hospital for post-natal care immediately after birth, said physician or officer shall, within twenty-four hours after such birth or admittance, file with the administrator, or person in charge of such hospital, a report, on forms prepared and furnished by the commissioner of public health, stating the facts required by this section to be shown on the record of such birth.

Amended by St.1939, c. 326, § 1; St.1955, c. 95, § 1; St.1957, c. 24; St.1959, c. 48, § 1; St.1960, c. 48, § 2; St.1961, c. 51; St.1963, c. 22, § 1; St.1968, c. 84, § 2; St.1968, c. 358, § 2; St.1976, c. 486, § 5.

§ 3A. Hospital administrator's duties; report; signature by parent; penalties

The administrator or person in charge of a hospital shall be required to obtain, within twenty-four hours after a birth occurring therein or the admittance thereto of a mother and child for postnatal care, the report required by section three. Said administrator or person in charge shall then forthwith make, or cause to be made, a copy of such report on forms prepared and furnished by the commissioner of public health and shall, within ten days after obtaining such report, file such copies with the clerk or registrar of the city or town wherein the birth occurred. Such copies shall be signed by the mother or if she is not able then by the father or other responsible adult, attesting to the truth and accuracy of the facts appearing in the report.

Any administrator or person in charge of a hospital violating any provision of this section shall be punished by a fine of not more than twenty-five dollars.

Added by St.1968, c. 84, § 2. Amended by St.1976, c. 486, § 6.

§ 3B. Birth without immediate admittance to hospital for postnatal care; report

Every physician attending a birth after which the mother and child are not admitted to a hospital for postnatal care immediately after birth shall, within ten days after such birth, file with the clerk of the city or town wherein such birth occurred a report on forms prepared and furnished by the commissioner of public health, stating the facts required to be shown on the record of such birth.

Added by St.1971, c. 288. Amended by St.1976, c. 486, § 7.

§ 4. Birth without attending physician; report; recording

The mother of a child who was born without a physician or hospital medical officer in attendance shall, within thirty days after the birth of such child, file a report of such birth, signed and sworn to by her, setting forth the facts required for a record as provided in section one, with the clerk or registrar of the city or town wherein such birth occurred. Written evidence substantiating such facts shall be furnished to said clerk or registrar and if he is satisfied as to the truth and accuracy thereof, he shall make a record of such birth.

Amended by St.1968, c. 84, § 3.

§ 4A. Local officials; processing of birth certificates

Each city and town clerk upon receipt of the return of a birth in his town shall determine that it is filled out in accordance with the requirements of section three. If there are any deficiencies or omissions therein, he shall return it to the hospital administrator for correction or completion. If the return is complete, he shall record it as required in section one.

The said town clerk or registrar shall file daily with the local board of health a list of all births reported to him, showing, as to each, the date of birth, sex, color, birth weight, family name, residence and physician or officer in charge.

Added by St.1941, c. 434. Amended by St.1960, c. 15, §§ 1, 2; St.1968, c. 84, § 4.

§ 5. Repealed by St.1968, c. 84, § 5, eff. Jan. 1, 1969

§ 6. Notification of births and deaths

Parents, within forty days after the birth of a child, and every householder within forty days after a birth in his house, shall cause notice thereof to be given to the clerk of the town where such child is born. The commissioner of social services, within forty days after the delivery or commitment of an abandoned child or foundling to the department of social services, shall cause notice of the birth of such child or foundling to be given to the clerk of the town wherein such child or foundling was found. Every householder in whose house a death occurs and the oldest next of kin of a deceased person in the town where the death occurs shall, within five days thereafter, cause notice thereof to be given to the board of health, or, if the selectmen constitute such board, to the town clerk. The keeper, superintendent or person in charge of a house of correction, prison, reformatory, hospital, infirmary or other institution, public or private, which receives inmates from within or without the limits of the town where it is located shall, when a person is received, obtain a record of all the facts which would be required for record in the event of the death of such person, and shall, on or before the fifth day of each month, give notice to the town clerk of every birth and death among the persons under his charge during the preceding month. The facts required for record by section one or section one A, as the case may be, shall, so far as obtainable, be included in every notice given under this section.

Amended by St.1939, c. 61, § 2; St.1978, c. 552, § 15.

§ 7. Report of births and deaths at sea

The master or other commanding officer of a vessel shall give notice, with the facts required for record, of every birth or death occurring among the persons under his charge. The notice of a birth shall be given to the clerk, and the notice of a death shall be given to the board of health or, if the selectmen constitute such board, to the clerk of the town at which his vessel first arrives after such birth or death.

§ 7A. Report of births on airplanes; penalty for violation

The captain or other commanding officer of an airplane shall give notice, with the facts required for record, of every birth occurring among the persons under his charge. Said notice shall be given to the clerk of the town at which his airplane first arrives after such birth. The captain or other commanding officer of an airplane neglecting to give notice of such a birth for ten days after the arrival of his airplane at the place where notice is to be given shall forfeit not more than five dollars.

Added by St.1950, c. 22.

§ 8. Penalty for failure to report births and deaths

A parent, keeper, superintendent or other person required by section six to give or cause to be given notice of a birth or death, neglecting so to do for ten days after the time limited therefor, and the master or commanding officer of a vessel neglecting so to do for ten days after the arrival of his vessel at the place where notice is to be given, shall forfeit not more than five dollars.

§ 9. Death certificates; issuance; contents

A physician, after the death of a person whom he has attended during his last illness, or the physician declaring such person dead, or if the death occurred in a hospital, a registered hospital medical officer duly appointed by the hospital director or administrator, shall immediately furnish for registration a standard certificate of death, to an undertaker or other authorized person or any member of the family of the deceased, stating to the best of his knowledge and belief the name of the deceased, the disease of which he died, defined, as required by section one, where same was contracted, the duration of the illness from which he died, when last seen alive by the physician, or, if death occurs in a hospital, when last seen alive by a physician and the date of death. Said physician or officer shall print or type on every certificate furnished by him under this section and section nine A the cause, or causes, of death and, directly below his signature, his name. The foregoing provisions shall apply in the same manner in the event of a child dying immediately after birth and said certificate shall include a statement that, to the best knowledge and belief of the certifying physician or hospital medical officer, as the case may be, such child died immediately after birth. Both the birth and death of such child shall be recorded.

Amended by St.1936, c. 100; St.1945, c. 113; St.1954, c. 137; St.1959, c. 48, § 2; St.1960, c. 48, § 3; St.1969, c. 106; St.1972, c. 260.

§ 9A. Repealed by St.1977, c. 598, § 1

§ 9B. Penalties

A physician or officer neglecting or refusing to furnish a certificate as provided in section nine or making a false statement therein, shall forfeit not more than fifty dollars.

Added by St.1960, c. 48, § 4. Amended by St.1977, c. 598, § 2.

§ 10. Death certificates of veterans; contents; penalty for violation

A physician or officer furnishing a certificate of death as required by section nine or by section forty-five of chapter one hundred and fourteen, shall, if the deceased, to the best of his knowledge and belief, was a Spanish War, World War I, World War II, Korean or Vietnam veteran, as defined in clause Forty-third of section seven of chapter four, or served in the Mexican border service of nineteen hundred and sixteen and nineteen hundred and seventeen, insert in the certificate a recital to that effect, and shall also certify in such certificate both the primary and the secondary or immediate cause of death as nearly as he can state the same. For neglect to comply with any provision of this section, such physician or officer shall forfeit ten dollars.

Amended by St.1954, c. 627, § 24; St.1976, c. 54.

§ 11. Duties of undertakers

Every undertaker or other person in charge of a funeral shall forthwith obtain the physician's or officer's certificate required by section nine, enter thereon the facts as to the deceased required by section one to be recorded, and return it to the board of health or its agent, or, if the selectmen constitute such board, to the clerk of the town where the death occurred. The board of health shall transmit such certificate to the town clerk.

Amended by St.1955, c. 95, § 2; St.1960, c. 48, § 5; St.1977, c. 598, § 3.

§ 12. Certified copies of birth and death records; transmission to nonresident parents or next of kin; exceptions

Except as hereinafter provided, the clerk of a city or town shall forthwith make a certified copy of the record of each birth and death recorded during the preceding month, if the parents of the child born were at the time of said birth residents of any other city or town in the commonwealth, or if the deceased at the time of his death was a resident of any other city or town aforesaid or was a war veteran and was buried in any other city or town aforesaid, and transmit such certified copy to the clerk of the city or town where such parents or deceased person were so resident, setting forth the name of the street and number of the house, if any, where such parents or deceased person so resided and, in the case of a deceased war veteran as aforesaid, to the clerk of the city or town where he was buried, setting forth the cemetery or other place of burial, and the clerk of a city or town in the commonwealth receiving such a certified copy, or receiving a certified copy of the record of a birth, marriage or death or of the burial of a war veteran from the clerk of a city or town without the commonwealth, shall record the same and transmit to the commissioner of public health a certified copy thereof. No birth record of a child born out of wedlock or a child of abnormal sex shall so be transmitted to any other city or town.

Amended by St.1937, c. 78, § 2; St.1945, c. 439; St.1960, c. 48, § 6; St. 1972, c. 401; St.1976, c. 486, § 9; St.1977, c. 598, § 4.

§ 13. Correction of records

If the record relating to a birth, marriage or death does not contain all the required facts, or if it is claimed that the facts are not correctly stated therein, the town clerk shall receive an affidavit containing the facts required for record, accompanied by documentary evidence substantiating such facts beyond reasonable doubt, if made by a person required by law to furnish the information for the original record, or, at the discretion of the town clerk, by credible persons having knowledge of the case, or, in the case of an abandoned child or foundling referred to in section one A, by the commissioner of social services.

If a person shall have acquired the status of a legitimate child by the intermarriage of his parents and the acknowledgment of his father or an adjudication of paternity under chapter two hundred and seventy-three, as provided in section seven of chapter one hundred and ninety, the record of his birth shall be amended or supplemented as hereinafter provided so as to read, in all respects, as if such person had been reported for record as born to such parents in lawful wedlock. For such purpose, the town clerk, if satisfied as to the identity of the persons and the facts, shall receive an affidavit setting forth the material facts, executed by the parents, or by either if the other is dead, or shall receive such an affidavit executed by the mother alone in the case of a child who has acquired the status of a legitimate child by the intermarriage of his parents and an adjudication of paternity as aforesaid, or shall receive, if both parents are dead, affidavits of the fact of such intermarriage, and of the acknowledgment of the father or of an adjudication of paternity as aforesaid, and of the death of each parent, executed by credible persons having knowledge of such facts, together with evidence substantiating such facts beyond all reasonable doubt, which affidavits and evidence shall have been submitted by the town clerk to a judge of probate or to a justice of a district court and shall have been approved by such judge or justice. Each such affidavit executed by the parent or parents shall be accompanied by a certified copy of the record of such intermarriage, if not recorded in the records in the custody of such clerk; and such affidavits executed by credible persons as aforesaid shall be accompanied by a certified copy of the record of such intermarriage and of the death of each parent, if not recorded in such records. Each affidavit of the fact of an adjudication of paternity as aforesaid shall be accompanied by a certified copy of such adjudication.

If, however, the birth of such a child was recorded as that of a legitimate child of the mother and the man who was her husband at the time of such birth, the record shall not be amended as provided in this section unless the illegitimacy has been legally determined or has been admitted by the affidavit of the mother and such husband, or, if the town clerk is satisfied that both the mother and such husband cannot be located, by the affidavit of either of them and by evidence substantiating the statements in such affidavit beyond all reasonable doubt, which affidavit and evidence shall have been submitted by the town clerk to a judge of probate or to a justice of a district court and shall have been approved by such judge or justice.

If a person shall have been adopted by judicial decree or a person so adopted has had his name legally changed at a later date to that of his adoptive parents, or if a person of illegitimate birth shall have acquired a new name by judicial decree, the clerk of the town where such person was born shall receive the certificate of such adoption issued under authority of section six A of chapter two hundred and ten or a certified copy of the decree for such adoption or change of name, whether issued by the probate court of the commonwealth or by the appropriate court of any other state or country. Except as hereinafter provided, said clerk, after receiving such certificate of adoption or any such certified copy of a decree of adoption, shall forthwith correct the record of birth of the person so adopted in the manner hereinafter provided and notify the adopting parents or parent that the requested amendment of the record has been made and that upon receipt of the fee prescribed by section thirty-four of chapter two hundred and sixty-two he shall furnish a certified copy of such record, as so amended. If the certificate of adoption or the certified copy of decree of adoption does not indicate the desire of the adopting parents, or parent, to have the record of birth of the person adopted corrected, the clerk shall not correct such record until he has received a statement, signed by the adopting parents, or parent, or by the person adopted, in the presence of some official authorized by law to administer oaths, requesting that such record be corrected. If such certificate or certified copy does not contain the original name and date and place of birth of the person adopted, the clerk shall not correct such record until he has received a statement of such facts from the court issuing such certificate or certified copy. If such certificate or certified copy does not contain the facts relative to the adopting parents, or parent, hereinafter required for correcting such record, the clerk shall not correct such record until he has received an affidavit, signed and sworn to by the adopting parents, or parent, or by the person adopted, or, at his discretion, by credible persons having knowledge of the case, and documentary evidence substantiating such facts beyond reasonable doubt.

He shall file any affidavit, certificate of adoption, certified copy of such decree or copy of record submitted under this section, and record it in a separate book kept therefor, with the name and residence of the deponent or the facts of such decree and the date of the original record, and shall thereupon draw a line through any statement, or statements, sought to be corrected or amended in the original record, without erasing them, shall enter upon the original record the facts required to correct, amend or supplement the same in accordance with such affidavit, certificate or decree, including, in case of a certificate or decree of adoption and in cases of persons adopted who have had their names legally changed later, the same facts relative to the adopting parents as are required in a record of birth by the provisions of section one relative to natural parents, and forthwith, if a copy of the record has been sent to the commissioner of public health and to the city or town clerk of the residence of the parents at the time of birth or where the deceased lived at the time of death, shall forward to the commissioner of public health and such city or town clerk a certified copy of the corrected, amended or supplemented record upon blanks to be provided by the commissioner of public health, noting thereon the documentary evidence submitted to substantiate the affidavit, and the commissioner of public health and the city or town clerk shall thereupon correct, amend or supplement the record in his office. Reference to the record of the affidavit or such decree shall be made by the clerk on the margin of the original record. If the clerk furnishes a copy of such a record, he shall certify to the facts contained therein as corrected, amended or supplemented. Except as provided in the following sentence, said clerk or other official responsible for the keeping of such records shall, upon proper judicial order, or when requested by a person seeking his own birth record, or by a person whose official duties, in the opinion of the clerk, entitled him to the information contained in the original record, release said information contained in such original record. If such original record has been amended following adoption in accordance with this section, the clerk or other official responsible for the keeping of such records shall issue information contained in the original record only upon receipt of an order of the probate court for the county in which said adoption was granted, or in the case of an adoption granted outside the commonwealth, upon order of the probate court for the county in which said birth occurred, instructing said clerk or other official responsible for the keeping of such records, to release the information contained in such original record. If the corrected, amended, or supplemented record is that of a person who has acquired the status of a legitimate child, or whose record has been amended through an adoption decree, the clerk shall not indicate on such copy that the record has been corrected, amended, or supplemented. Such affidavit, or a certified copy of the record of any other town or of a written statement made at the time by any person since deceased required by law to furnish evidence thereof, may, in the discretion of the clerk, be made the basis for the record of a birth, marriage or death not previously recorded, and such copy of record may also be made the basis for completing the record of a birth, marriage or death not containing all the required facts.

Upon the adoption of any abandoned child or foundling found within the commonwealth and adopted according to the laws thereof and as to whose birth the facts required by section one or section one A to be recorded have not been recorded or, if recorded, cannot be identified, the clerk of the town wherein such child or foundling was found, upon receipt of an affidavit executed by the adopting parent or parents, as the case may be, setting forth all the material facts known to him or them concerning said child or foundling, and of an order issued by the commissioner of social services determining the date of birth of such child or foundling as nearly as may be, shall receive and record the facts relative to such birth as provided in said section one or said section one A. In addition to any other certificates or copies of such records authorized by law, said director [1] may, upon application, issue certificates setting forth the facts concerning said abandoned child or foundling appearing in any records of the department of social services.

The person upon whose application a record of a birth, marriage or death is corrected or amended, a delayed record of a birth is entered, or a record of a birth of an illegitimate child subsequently legitimatized is amended shall pay the city or town clerk the fees therefor provided by clauses (11), (12), (13), (14), (29), (30), and (45) of section thirty-four of chapter two hundred and sixty-two.

Amended by St.1933, c. 280, § 2; St.1938, c. 63; St.1938, c. 97; St.1939, c. 61, §§ 3, 4; St.1941, c. 50; St.1943, c. 72, § 2; St.1945, c. 65; St.1948, c. 550, § 2; St.1953, c. 261, §§ 1, 2; St.1955, c. 107, §§ 3, 4; St.1956, c. 342; St.1959, c. 146; St.1960, c. 342, §§ 1, 2; St.1966, c. 120; St.1966, c. 310; St.1971, c. 266; St.1974, c. 546; St.1976, c. 486, § 10; St.1978, c. 552, §§ 16, 17.

[1] So in enrolled bill of St.1978, c. 552, § 17. Probably should read "commissioner".

§ 13A. Correction of birth records; procedure

If it is claimed that a child was born in a city or town in this commonwealth and the clerk or registrar of such city or town has no record thereof, said clerk or registrar may receive an affidavit, signed and sworn to by a parent of such child, or, in his discretion, by some credible person or persons having knowledge of the case, setting forth the facts relating to such birth, in the manner provided by section one, and documentary evidence substantiating such facts beyond reasonable doubt. If said clerk or registrar is satisfied as to the truth and accuracy of the statements in such affidavit and the sufficiency of the evidence submitted therewith, he shall make a record of such birth.

A person who is unable to furnish such an affidavit for the establishment of his birth record may petition the clerk or registrar of the city or town wherein it is claimed his birth occurred for the recording of his birth. If the evidence submitted by the petitioner is satisfactory to said clerk or registrar as a basis for establishing such record, he shall accept the same and record the birth. If, however, in the opinion of said clerk or registrar such evidence is not satisfactory, he shall refuse in writing to record the birth. Such person may then present a petition, together with such written refusal and his evidence to establish the validity of such record, to a judge of the probate court of the county in which such city or town is located. Written notice shall be given to said clerk or registrar of the time and place of the hearing on such petition. After such hearing, if it is the opinion of the court that such birth should be recorded, it shall be so ordered. Upon receipt of such order from said judge, said clerk or registrar shall establish the record.

Added by St.1945, c. 542. Amended by St.1965, c. 12, § 3; St.1968, c. 29.

§ 14. Penalty for false returns

Whoever wilfully makes a false return relative to a birth, marriage or death shall forfeit not more than fifty dollars.

§ 15. Blank forms for returns of births

Each town clerk shall annually give public notice that he will furnish blanks for returns of births to parents, householders, physicians and registered hospital medical officers applying therefor.

§ 16. Blank forms for towns and boards of health; contents; distribution

The commissioner of public health shall prepare and furnish to the clerks and boards of health of towns and to the superintendent of the Tewksbury hospital, record books, books for indexes thereto, forms for returns, on paper of uniform size, and any necessary instructions and explanations, including an explanation that sections one hundred and ten and one hundred and eleven of chapter one hundred and eleven require physicians, registered hospital medical officers, nurses, relatives or other attendants to report immediately to the local board of health every child one or both of whose eyes become inflamed, swollen and red and show an unnatural discharge within two weeks after birth. Town clerks shall distribute the blank forms as the commissioner of public health shall direct. A town may provide such books and forms if they conform to those so prepared. The commissioner of public health shall prepare and furnish to the probate courts of the several counties forms for certificates of adoption required by section six A of chapter two hundred and ten.

Amended by St.1941, c. 351, § 4; St.1955, c. 107, § 5; St.1958, c. 613, § 2B; St.1976, c. 486, § 11.

§ 17. Annual reports

The clerk of each town and of each city containing not more than ninety thousand inhabitants shall, not later than sixty days, and the clerk of each city containing more than ninety thousand inhabitants shall, not later than ninety days, following every month in which births occur in such town or city, transmit to the commissioner of public health upon forms furnished by him, certified copies of the records of such births and certified copies of such amendments and corrections in birth, marriage and death records as have not been previously returned. The clerk of each city and town shall on or before the tenth day of the second month following every month in which marriages are solemnized transmit to the commissioner of public health upon forms furnished by him, certified copies of such marriage records as the commissioner of public health may determine. On the copy of the record of any marriage the written notice of intention to enter into which was accompanied by a certificate under section twenty A of chapter two hundred and seven, such clerk shall cause to be stamped or typed the word "Impounded" or the abbreviation "Imp." The clerk of each city and town shall annually, not later than March first, report to the commissioner of public health on forms furnished by him, the number of intentions filed in the clerk's office, and the number of intentions on which licenses were not issued, or, if issued, were not returned to the clerk. The clerk of each city and town shall, on or before the tenth day of every month, transmit to the commissioner of public health upon forms furnished by him, certified copies of the records of deaths occurring therein during the preceding month or, in case no such deaths have occurred, a certificate of such fact.

Amended by St.1932, c. 12; St.1939, c. 269, § 2; St.1960, c. 21, § 1; St. 1976, c. 486, § 12.

§ 18. Information on forms; legible writing required

Copies transmitted under sections twelve and seventeen shall be written in a legible hand, typewritten or reproduced in actual size by photographic or microphotographic process. Anything in sections sixteen and seventeen to the contrary notwithstanding, copies reproduced in actual size by photographic or microphotographic process upon paper approved by the state secretary need not be upon paper furnished by him.

Amended by St.1957, c. 95.

§ 19. Use of records as evidence

The record of the town clerk relative to a birth, marriage or death shall be prima facie evidence of the facts recorded, but nothing contained in the record of a death which has reference to the question of liability for causing the death shall be admissible in evidence. A certificate of such a record, signed by the town clerk or assistant clerk, or a certificate of the copy of the record relative to a birth, marriage or death required to be kept in the department of public health, signed by the commissioner of public health or the registrar of vital records and statistics, shall be admissible as evidence of such record. Upon request for an abbreviated record of a birth, marriage or death, the clerk or assistant clerk, commissioner of public health or registrar of vital records and statistics, shall make an abstract of the record of the same without notation thereon of the name of the parent or parents, except by request of the applicant. Upon the written request of the person to whom the record relates or of either of his parents, the clerk or assistant clerk, commissioner of public health or registrar of vital records and statistics, shall issue a certified copy of a birth record containing no reference to the color of said person or his parents.

Amended by St.1943, c. 228, § 1; St.1945, c. 570, § 1; St.1950, c. 366; St. 1969, c. 478; St.1976, c. 486, § 13.

§ 19A. Unauthorized reproduction of records; penalty

Reproductions of certificates or records referred to in section nineteen by any person other than the town clerk, assistant clerk, commissioner of public health shall be prohibited, except that a register of deeds, register of probate or other county, state, municipal or federal official keeper of public records may, in the course of his official duties, reproduce such certificates or records as are required in his office. Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1969, c. 759. Amended by St.1976, c. 486, § 14.

§ 19B. Certified copies of birth records; restricted information regarding mother

A certified copy of a birth record furnished under section two A shall not, unless the applicant so requests or unless the certificate is to be used in conjunction with a judicial proceeding, include the name of or any other information regarding the mother.

Added by St.1970, c. 151.

§ 20. Deaths in Tewksbury hospital; report

The superintendent of the Tewksbury hospital shall obtain, record and make return of the facts relative to deaths therein in the same manner as town clerks. The clerk of the town where said institution is located shall, relative to the deaths therein, be exempt from the duties otherwise required of him by this chapter.

Amended by St.1941, c. 351, § 5; St.1958, c. 613, § 2C; St.1961, c. 396, § 1.

§ 21. Repealed by St.1976, c. 486, § 15

§ 22. Registrars of vital statistics

Any city, except Boston, and any town containing more than ten thousand inhabitants, may provide for the appointment of a person other than the clerk to be registrar. Such registrars, and in Boston the city registrar, shall be sworn and the provisions of this chapter relative to clerks shall apply to them.

§ 23. Prosecution of persons failing to file required reports

The town clerk shall give written notice of the requirements of this chapter to any person neglecting to comply therewith, and upon the continuance of such neglect for one month shall notify the agent or attorney duly appointed by the town to sue in its corporate capacity, or, if there is no such agent or attorney, the district attorney of the district, who shall cause a prosecution for the penalty or forfeiture therefor to be instituted.

§ 24. Statements of births and deaths; penalty

In any statement of births or deaths printed by a town the name of an illegitimate child or of its parents or of the parents of a child born dead shall not be printed, but the word "illegitimate" shall be used in place thereof. A town violating this section shall forfeit to the mother of such child not more than one hundred dollars.

Amended by St.1960, c. 48, § 7; St.1977, c. 598, § 4A.

§ 25. Disposition of fines and forfeitures

All fines and forfeitures recovered under this chapter shall, except as provided in sections twenty-four and twenty-seven, accrue to the benefit of the town where the required return should have been made.

§ 26. Fees

The town clerk shall receive the following fees from the town upon presenting to the town treasurer a certificate of the receipt of the prescribed copies by the commissioner of public health: For each birth, marriage or death, one dollar. He shall also receive from the town the following fees: For each certificate transmitted under section twelve, fifty cents; for receiving and recording an affidavit and forwarding a copy thereof under section thirteen, one dollar; for sending the notice required by section twenty-three, fifty cents; for each oath administered in his capacity as clerk, twenty-five cents. A town may limit the aggregate compensation allowed to its clerk.

Amended by St.1939, c. 326, § 2; St.1947, c. 283; St.1963, c. 22, § 2; St. 1976, c. 486, § 16.

§ 27. Clerks; penalty for neglecting required duties

A city or town clerk or registrar refusing or neglecting to perform any duty required of him under this chapter shall be punished by a fine of not less than twenty nor more than one hundred dollars. Fines recovered for violation of section eighteen shall be to the use of the commonwealth.

§ 28. Administration of oaths

An oath required by this chapter may be administered by the clerk, assistant clerk or registrar of a town.

§ 29. Attestation of certificates

Town clerks or registrars shall attest their copies of the record of births, marriages or deaths with the official seal of the town.

§ 30. Alteration, forgery or counterfeiting; penalty

Whoever falsely makes, alters, forges or counterfeits, or procures or assists another to falsely make, forge or counterfeit, a copy of a record of birth, marriage or death, or whoever forges or without authority uses the signature, facsimile of the signature, or validating signature stamp of a city or town clerk, or the secretary of state upon a genuine or falsely made, altered, forged or counterfeited copy of such a record, or whoever utters, publishes as true or in any way makes use of a falsely made, altered, forged or counterfeited copy of such a record, or whoever uses, attempts to use, with intent to defraud or deceive, a copy of a record of the birth or marriage of a person other than himself, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months in a house of correction.

Added by St.1964, c. 310.

CHAPTER 47

INFIRMARIES

Sec.

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§ 1. Authorization

Any town may erect or provide and maintain an infirmary for persons in need. No town shall erect or maintain an infirmary wholly or in part within the limits of any other town without its consent.

§ 2. Management

Any town which has an infirmary may annually choose three, five, seven or more directors to have the management thereof, who may appoint a superintendent and assistants. If such directors are not chosen, the selectmen shall be the directors.

Amended by St.1967, c. 658, § 6.

§ 3. Meetings of directors; promulgation of rules and regulations

The directors shall at least monthly hold general meetings at which they may make orders and regulations for the infirmary, to be binding until the next meeting of the town or of the city council, when the same shall be submitted to such meeting, and if approved shall remain in force until revoked by the town or by the city council.

§ 4. Joint infirmaries

Any number of towns may, at their joint charge and for their common use, erect or provide an infirmary and purchase land for the use thereof.

§ 5. Joint management

The management and repair of such infirmary shall be vested in a joint board of directors, who shall be chosen annually by the several towns interested.

§ 6. Membership of joint board; vacancies

Unless all the towns interested in such infirmary agree to choose a different number, each of them shall choose three members of the joint board; and upon the death of a director, or his removal from the place for which he was chosen, the vacancy may be filled by such town. If a town neglects to choose directors, those chosen by the other towns shall have charge of the infirmary.

§ 7. Expenses, payment

The expense of maintaining the infirmary shall be paid by the several towns interested, in proportion to their share of the state tax at the time when the expense was incurred, unless they agree to a different proportion.

§ 8. Records of admissions

Each infirmary shall keep records of all persons admitted to it, which records shall be in the form prescribed by the department of public welfare.

§ 9. Discontinuance

An infirmary may be discontinued or appropriated to any other use if the towns interested so determine.

§ 10. Rates for non-indigent persons

Persons able to pay for infirmary care may be received and cared for in an infirmary at a rate fixed by the board of directors thereof.

§ 11. Detention of children; conditions

No child shall be detained in an infirmary for more than sixty days unless his physical condition is such as to make such action necessary or desirable or unless he is under three years of age and his mother is a suitable person to aid in taking care of him and is an inmate of the same infirmary.

Amended by St.1961, c. 396, § 2.

CHAPTER 49A

USE OF CERTAIN ANIMALS FOR SCIENTIFIC INVESTIGATION, EXPERIMENT OR INSTRUCTION

Sec.

1. Definitions
2. Licenses; applications; issuance; revocation
3. Impounded animals; delivery to licensee; exceptions
4. Reclaimed animals; return; liability
5. Care of animals; reimbursement by licensee
6. Revocation of licenses; causes
7. Commissioner; duty to establish rules and fees; visitations
8. Commissioner; right to incur expenses
8A. Animal protection societies; right of inspection
9. Penalties
10. Severability

§ 1. Definitions

The following words, as used in this chapter shall, unless the context otherwise requires, have the following meanings:—

"Animal", the dog and the cat specifically and all other sentient creatures other than man.

"Animal pound", any establishment or individual which confines, cares for or disposes of seized, lost or strayed animals pursuant to contract or other arrangement with any city or town or other public authority, and any officer appointed under sections one hundred and thirty-six A to one hundred and seventy-four, inclusive, of chapter one hundred and forty to enforce the laws relating to dogs.

"Commissioner", the commissioner of public health.

"Impounded animal", any animal in the custody of an animal pound.

"Institution", any institution operated by the United States or by the commonwealth or a political subdivision thereof, or any school or college of medicine, public health, dentistry, pharmacy, veterinary medicine or agriculture, medical diagnostic laboratory or biological laboratory, hospital or other educational or scientific establishment within the commonwealth above the rank of secondary school, which, in connection with any of its activities, investigates or gives instruction concerning the structure or functions of living organisms, the causes, prevention, control or cure of diseases or abnormal conditions of human beings or animals.

"License", the authority given by the commissioner to obtain live impounded animals from any animal pound.

"Licensee", any institution granted a license by the commissioner.

"Owner", any person who proves his ownership of an animal by the possession of a current and valid license or other satisfactory proof of ownership.

Added by St.1957, c. 298, § 1.

§ 2. Licenses; applications; issuance; revocation

(*a*) An institution may apply to the commissioner for a license to obtain impounded animals from animal pounds in the commonwealth the the purpose of scientific investigation, experiment or instruction or for the testing of drugs or medicines. On receipt of such application the commissioner shall make or cause to be made such investigation as he may deem necessary to determine whether the public interest would be served by the issue of such license. The commissioner shall issue such license unless, after notice and hearing, he finds that the institution, by reason of its standards, facilities, practices or activities, is not a fit and proper agency to receive such license, and that the issue thereof is not in the public interest.

(*b*) Each license shall expire on June thirtieth next following the date of issue. The commissioner shall annually renew each license upon the application of the licensee unless, after notice and hearing, he finds that by reason of the standards, facilities, practices or activities of the licensee such renewal is not in the public interest.

Added by St.1957, c. 298, § 1.

§ 3. Impounded animals; delivery to licensee; exceptions

(*a*) Upon application of a licensee an animal pound shall forthwith deliver from its available impounded animals such number and kinds of animals as the licensee may specify as being required for the purpose of scientific investigation, experiment or instruction or for the testing of drugs or medicines. If an application or applications are made on an animal pound for a greater number of animals of any kind than it then has available for delivery, such animal pound shall forthwith deliver all available animals to such applicant or applicants and shall thereafter withhold from execution and deliver to such applicant or applicants from time to time forthwith upon their becoming available all animals of the kinds so required until it has honored all pending applications.

(*b*) No animal shall be available for delivery in any county except Suffolk county, to a licensee unless (1) it has been impounded for a period of ten days, and (2) it has not, prior to delivery to the licensee, been claimed and redeemed by its owner or by any individual who personally desires it as a pet and has paid the necessary fees, and the expenses for the care of the animal. In Suffolk county, no animal shall be available for delivery to a licensee unless (1) it has been impounded for a period of seven days, and (2) it has not, prior to delivery to the licensee, been claimed and redeemed by its owner or by any individual who personally desires it as a pet and has paid the necessary fees, and the expenses for the care of the animal.

(*c*) No animal pound shall deliver to any licensee any animal which has been delivered to such animal pound by its owner with a signed request for its immediate execution.

Added by St.1957, c. 298, § 1. Amended by St.1973, c. 49, § 1; St.1974, c. 778, § 1; St.1976, c. 289, § 1.

§ 4. Reclaimed animals; return; liability

A licensee shall at its own expense return to an animal pound any animal obtained therefrom under the provisions of section three and subsequently identified, claimed and redeemed by its owner, but the licensee shall not be liable to the owner for any injury to or illness or subsequent death of any such animal.

Added by St.1957, c. 298, § 1.

§ 5. Care of animals; reimbursement by licensee

A licensee shall pay such reasonable fee as the commissioner may establish to reimburse the animal pound for the prior care of any animal delivered to such licensee. Each licensee shall provide for the transportation from the animal pound of any animal obtained therefrom under the provisions of section three. No licensee shall be required to pay any other licensee or other fee for animals delivered to or held by it.

Added by St.1957, c. 298, § 1.

§ 6. Revocation of licenses; causes

The commissioner, after notice and hearing, may revoke any license (1) if the licensee violates any provision of this chapter or any rule or regulation promulgated hereunder; or (2) if the standards, facilities, practices or activities of the licensee are such that the continued exercise by such licensee of the rights conferred by its license would not be in the public interest.

Added by St.1957, c. 298, § 1.

§ 7. Commissioner; duty to establish rules and fees; visitations

The commissioner shall establish fees for reimbursing animal pounds for the prior care of animals delivered to licensees, and may make such rules and regulations, not inconsistent with this chapter, as may be necessary to carry out its purposes, and may alter, rescind or add to any rules and regulations previously made. The commissioner, or an agent designated by him, may, in connection with the granting, continuance or renewal of a license, visit any licensee or any institution which has applied for a license.

Added by St.1957, c. 298, § 1.

§ 8. Commissioner; right to incur expenses

The commissioner may, subject to appropriation, incur such expenses as may be necessary to enable him to exercise and perform the powers and duties conferred and imposed upon him by this chapter.

Added by St.1957, c. 298, § 1.

§ 8A. Animal protection societies; right of inspection

Duly authorized representatives of the Massachusetts Society for the Prevention of Cruelty to Animals and the Animal Rescue League of Boston shall have the right from time to time at reasonable hours to inspect the standards, facilities, practices or activities in connection with the use of animals by any institution which has applied for or received a license under the provisions of this chapter. Said organizations shall be notified and shall have the right to be heard at any hearing held by the commissioner under the provisions of sections two or six.

Added by St.1957, c. 298, § 1.

§ 9. Penalties

Whoever knowingly violates any of the provisions of this chapter or any rules or regulations promulgated thereunder shall be punished by a fine of not more than one hundred dollars for each offence.

Added by St.1957, c. 298, § 1.

§ 10. Severability

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

Added by St.1957, c. 298, § 1.

TITLE IX

TAXATION

CHAPTER 59

ASSESSMENT OF LOCAL TAXES

PERSONS AND PROPERTY EXEMPT FROM TAXATION

Sec.
5. Property; exemptions.

PERSONS AND PROPERTY EXEMPT FROM TAXATION

§ 5. Property; exemptions

The following property shall be exempt from taxation and the date of determination as to age, ownership or other qualifying factors required by any clause shall be July first of each year unless another meaning is clearly apparent from the context; provided, however, that any person who receives an exemption under the provisions of clause Seventeen, Twenty-second, Twenty-second A, Twenty-second B, Twenty-second C, Twenty-second D, Twenty-second E, Thirty-seventh, Forty-first, Forty-second or Forty-third shall not receive an exemption on the same property under any other provision of this section, except clauses Eighteenth or Forty-fifth:

First, Property owned by the United States so far as the taxation of such property is constitutionally prohibited, excepting property which the Congress of the United States has permitted to be subject to local taxation.

Second, Property of the commonwealth, except real estate of which the commonwealth is in possession under a mortgage for condition broken, lands in Boston known as the commonwealth flats, if leased for business purposes, lands and flats lying below high water mark in Provincetown harbor, belonging to the commonwealth and occupied by private persons by license of the department of environmental quality engineering together with all wharves, piers and other structures which have been built thereon subsequent to the twenty-second day of May, nineteen hundred and twenty, and those which may hereafter be built on said lands and flats, in conformity with permits or licenses, buildings erected by lessees under section twenty-six of chapter seventy-five, structures erected on land in state forests, parks and reservations by persons occupying such land under authority conferred by the commissioner of environmental management, property taxable under chapter five hundred and seventy-five of the acts of nineteen hundred and twenty, and real estate taxable under section three A.

Third, Personal property of a charitable organization, which term, as used in this clause, shall mean (1) a literary, benevolent, charitable or scientific institution or temperance society incorporated in the commonwealth, and (2) a trust for literary, benevolent, charitable, scientific or temperance purposes if it is established by a declaration of trust executed in the commonwealth or all its trustees are appointed by a court or courts in the commonwealth and if its principal literary, benevolent, charitable, scientific or temperance purposes are solely carried out within the commonwealth or its literary, benevolent, charitable, scientific or temperance purposes are principally and usually carried out within the commonwealth; and real estate owned by or held in trust for a charitable organization and occupied by it or its officers for the purposes for which it is organized or by another charitable organization or organizations or its or their officers for the purposes of such other charitable organization or organizations; and real estate purchased by a charitable organization with the purpose of removal thereto, until such removal, but not for more than two years after such purchase; provided, however, that:—

(*a*) If any of the income or profits of the business of the charitable organization is divided among the stockholders, the trustees or the members, or is used or appropriated for other than literary, benevolent, charitable, scientific or temperance purposes or if upon dissolution of such organization a distribution of the profits, income or assets may be made to any stockholder, trustee or member, its property shall not be exempt; and

(*b*) A corporation coming within the foregoing description of a charitable organization or trust established by a declaration of trust executed in the commonwealth and coming within said description of a charitable organization shall not be exempt for any year in which it omits to bring in to the assessors the list, statements and affidavit required by section twenty-nine and a true copy of the report for such year required by section eight F of chapter twelve to be filed with the division of public charities in the department of the attorney general, nor shall it be exempt for that athletic property or portion thereof for the part of the year which the assessors have determined to be utilized for other than literary, educational, benevolent, temperance, charitable, or scientific purposes in direct competition with a person engaged in the same activity and subject to the tax imposed by this chapter on properties so used. In the case of the exemption of property from tax for a part of the year, the tax imposed shall bear the same proportion to the tax which would be applicable to such property if it were subject to tax for the entire year as the time such property is employed in such use bears to the total time during which such property is available for use during the year.

(*c*) Real or personal property of a charitable organization occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, shall not be exempt unless at least one fourth of all property so occupied or used, wholly or partly, on the basis of valuation thereof, and one fourth of the income of all trust and other funds and property held for the benefit of such asylum, hospital or institution and not actually occupied or used by it for such purposes, is used and expended entirely for the treatment, board, lodging or other direct benefit of indigent insane persons, or indigent persons in need of treatment for mental diseases, as resident patients, without any charge therefor to such persons either directly or indirectly, except that a charitable organization conducing an insane asylum, insane hospital or institution for the insane to which persons adjudged insane by due process of law may be committed shall be exempt from taxation on personal property and buildings so occupied or used, but shall be subject to taxation on the fair cash value of the land owned by it and used for the purposes of such asylum, hospital or institution; and

(*d*) Real estate acquired after May fourth, nineteen hundred and eleven, by any association or private corporation formed or incorporated for the care of the insane, shall not be exempt under paragraph (*c*) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to the acquisition of such real estate, to be so exempt; nor shall real estate of a trust coming within the foregoing description of a charitable organization, if occupied or used wholly or partly as or for an insane asylum, insane hospital, or institution for the insane, or principally for the treatment of mental diseases or mental disorders, be exempt under paragraph (*c*) unless the city council of the city, or the inhabitants of the town, in which it is situated, have by vote lawfully taken consented to such exemption; and

(*e*) Real and personal property of an educational institution coming within the foregoing description of a charitable organization which is occupied or used wholly or principally as residences for officers of such institutions and which is not part of or contiguous to real estate which is the principal location of such institution shall not be exempt.

Fourth, That portion of the real estate and buildings of incorporated horticultural societies used for their offices, libraries and buildings.

Fourth A, Real and personal estate of incorporated agricultural societies, provided that if the whole or any part of any such real estate is used for other than agricultural exhibition purposes and if the society derives any income from such use, such real estate, or part, as the case may be, shall not be exempt.

Fifth, The real and personal estate belonging to or held in trust for the benefit of incorporated organizations of veterans of any war in which the United States has been engaged, to the extent of two hundred thousand dollars, if actually used and occupied by such association, and if the net income from said property is used for charitable purposes; but it shall not be exempt for any year in which such association or the trustees holding for the benefit of such association wilfully omit to bring in to the assessors the list and statement required by section twenty-nine.

Sixth, Real estate owned by or held in trust for a regiment, corps, company or other organized unit of the volunteer militia and used exclusively for military purposes, and tangible personal property owned by such an organized unit of the volunteer militia and used by it or its members exclusively for military purposes, for any year in which the trustee or a competent officer of the organization owning such property brings in to the assessors the list and statement required by section twenty-nine.

Seventh, Personal property of a fraternal society, order or association, operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing life, sick, accident or other benefits for the members of such society, order or association, or their dependents.

Eighth, Personal property of any retirement association exempted by section nineteen of chapter thirty-two.

Ninth, Property of any annuity, pension or endowment association exempted by section forty-one of said chapter.

Tenth, Personal property owned by or held in trust within the commonwealth for religious organizations, whether or not incorporated, if the principal or income is used or appropriated for religious, benevolent or charitable purposes.

Eleventh, Houses of religious worship owned by, or held in trust for the use of, any religious organization, and the pews and furniture, and, to an amount not exceeding one hundred thousand dollars for each parsonage so owned, or held in irrevocable trust, for the exclusive benefit of the religious organizations, and including the official residences occupied by district superintendents of the United Methodist Church and The Christian and Missionary Alliance and of the Church of the Nazarene, and by district executives of the Southern New England District of the Assemblies of God, Inc., Unitarian-Universalist Churches and The Baptist General Conference of New England, and the official residence occupied by the president of the New England Synod of the Lutheran Church in America, Inc., and the official residence occupied by a person who has been designated by the congregation of a Hebrew Synagogue or Temple as the rabbi thereof, but such exemption shall not, except as herein provided, extend to any portion of any such house of religious worship appropriated for purposes other than religious worship or instruction.

Twelfth, Cemeteries, tombs and rights of burial, so long as dedicated to the burial of the dead, and buildings owned by religious nonprofit corporations and used exclusively in the administration of such cemeteries, tombs and rights of burial.

Thirteenth, Personal property held by cities, towns, religious societies and cemeteries, whether incorporated or unincorporated, or by the commonwealth or by any corporation, for the perpetual care of graves, cemetery lots and cemeteries, for the placing of flowers upon graves, for the care or renewal of gravestones, monuments or tombs, and for the care and maintenance of burial chapels; but this exemption shall not apply to any such personal property held by a cemetery corporation which distributes any of the income or profits of its business among its stockholders or members, nor shall such property be exempt for any year in which the holder thereof, other than the state treasurer, omits to bring in to the assessors the list and statement required by section twenty-nine.

Fourteenth, Any real or personal property of a water company whose charter exempts such property from taxation, but not of any other water company unless exempted by clause sixteenth.

Fifteenth, Property other than real estate owned by a credit union incorporated under chapter one hundred and seventy-one; also the capital stock thereof.

Sixteenth, (1) In the case of (*a*) a Massachusetts savings bank, (*b*) a Massachusetts co-operative bank, (*c*) a Massachusetts corporation subject to taxation under chapter sixty-three other than a corporation mentioned in either paragraph (2) or paragraph (3) of this clause, or (*d*) a foreign corporation subject to taxation under section twenty, twenty-three, fifty-two A or fifty-eight of said chapter sixty-three, all property owned by such bank or corporation other than the following:—real estate, poles, underground conduits, wires and pipes, and machinery used in manufacture or in supplying or distributing water; provided, that in the case of a foreign corporation subject to taxation under said section twenty or said section twenty-three, the laws of the state of incorporation, or, in the case of a foreign corporation of another nation, the laws of the state where it has elected to establish its principal office in the United States, grant similar exemption from taxation of tangible property owned by like corporations organized under or created by the laws of the commonwealth.

(1A) Underground wires, conduits and appurtenant equipment installed in accordance with the provisions of an ordinance or by-law adopted pursuant to the provisions of section twenty-two C or section twenty-two D of chapter one hundred and sixty-six to the extent of seventy-five per cent of the value thereof.

(2) In the case of (*a*) domestic business corporation or (*b*) a foreign corporation, both as defined in section thirty of chapter sixty-three, all property owned by such corporation other than the following:—real estate, poles, underground conduits, wires and pipes, and machinery used in the conduct of the business, which term, as used in this clause, shall not be deemed to include stock in trade or any personal property directly used in connection with dry cleaning or laundering processes or in the refrigeration of goods or in the air-conditioning of premises or in any purchasing, selling, accounting or administrative function.

(3) In the case of (*a*) a domestic manufacturing corporation as defined in section thirty-eight C of chapter sixty-three or (*b*) a foreign manufacturing corporation as defined in section forty-two B of said chapter, all property owned by such corporation other than the following:—real estate, poles and underground conduits, wires and pipes.

(4) Exemption under this clause shall not extend to a corporation subject to the provisions of section three of chapter one hundred and eighty-one, if such corporation has failed to comply with said provisions.

(5) The classification by the commissioner, or the appellate tax board, as the case may be, of a corporation as a domestic business corporation, a domestic manufacturing corporation, a foreign corporation or a foreign manufacturing corporation, as respectively defined as aforesaid, shall be followed in the assessment under this chapter of machinery used in the conduct of the business.

Seventeenth, Real estate, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of a surviving spouse or of any minor whose parent is deceased, occupied by such spouse, or minor as her or his domicile, or a person or persons over the age of seventy who has owned and occupied it as a domicile for not less than ten years; provided, that the whole estate, real and personal, of such spouse, person or minor does not exceed in value the sum of twenty thousand dollars, exclusive of property otherwise exempt under clauses Twelfth, Twentieth and Twenty-first and exclusive of the value of the mortgage interest held by persons other than the person or persons to be exempted in such mortgaged real estate as may be included in such whole estate. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse, person or minor to evade taxation. A spouse, person or minor aggrieved by any such judgment may appeal to the county commissioners or to the appellate tax board within the time and in such manner allowed by section sixty-four or sixty-five, as the case may be. Where the whole estate, real and personal, of such spouse, person or minor exceeds in value the sum of eight thousand dollars, exclusive of property otherwise exempt as aforesaid and exclusive of the value of the mortgage interest as aforesaid, this exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected. Any exemption under this clause, to the taxable valuation of two thousand dollars or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due may be apportioned among the persons whose title to the real estate was acquired under the provisions of section three of chapter one hundred and ninety and who qualify for an exemption under this clause.

Eighteenth, Any portion of the estates of persons who by reason of age, infirmity and poverty are in the judgment of the assessors unable to contribute fully toward the public charges.

Nineteenth, Merchandise, machinery and animals owned by inhabitants of this commonwealth but situated in another state.

Twentieth, The wearing apparel, farming utensils and cash on hand of every person and the tools of his trade if a mechanic, to any amount; his household furniture and effects, including jewelry, plate, works of art, musical instruments, radios, television sets and garage or stable accessories, in storage in a public warehouse kept and maintained under chapter one hundred and five or used or commonly kept in or about the dwelling of which he is owner of record or for the use of which he is obligated to pay rent, and which is the place of his domicile; and, to an amount not exceeding a total value of ten thousand dollars, in respect to boats, fishing gear and nets owned and actually used by him in the prosecution of his business if engaged exclusively in commercial fishing; provided, that failure to comply with the provisions of sections twenty-nine and sixty-one relative to the filing of a list of his personal estate with the assessors shall not be a bar to an abatement of the tax, if any, imposed upon such personal estate.

Twenty-first, Mules, horses and neat cattle less than one year old; swine, sheep and goats less than six months old; domestic fowl not exceeding fifteen dollars in value; mules, horses, neat cattle, swine, sheep, goats and domestic fowl subject to an excise imposed by section eight A; neat cattle which are less than three years old and held for the personal use and consumption of the owner.

Twenty-second, Real estate of the following classes of persons who are legal residents of the commonwealth and who are veterans, as defined in clause Forty-third of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemptions under this clause, hereinafter referred to in this clause as soldiers and sailors, provided such real estate is occupied in whole or in part as his domicile by such person, and provided, further that if the spouse of the soldier or sailor is also a soldier or sailor each shall receive the amount of exemption provided in this clause to the same extent as if unmarried, to the amount of two thousand dollars of assessed taxable valuation or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due. No real estate shall be so exempt which the assessors shall adjudge has been conveyed to a soldier or sailor or to the spouse, surviving spouse, father or mother of a soldier or sailor to evade taxation.

(*a*) Soldiers and sailors who, as a result of disabilities contracted while in such wartime service and in the line of duty, have a disability rating of ten per cent or more as determined by the Veterans Administration or by any branch of the armed forces. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been allowed, unless the disability rating determined by the Veterans Administration or any branch of the armed forces is reduced to less than ten per cent.

(*b*) Soldiers and sailors who served in the military or naval service of the United States in the Spanish War, in the Philippine Insurrection or in the Chinese Relief Expedition and were discharged or released in any manner other than dishonorably therefrom.

(*c*) Soldiers and sailors who have been awarded the decoration of the Purple Heart. No evidence of disability shall be required under this paragraph. After the assessors have allowed an exemption under this paragraph, no further evidence of the receiving of the Purple Heart shall be required in any subsequent year in the city or town in which the exemption has been so allowed.

(*d*) Spouses of soldiers and sailors entitled to exemption under this clause and the surviving spouse of soldiers or sailors described in this clause and in clauses Twenty-second A, Twenty-second B, Twenty-second C and Twenty-second E who at the time of their death were entitled to exemption or who lost their lives while serving in said war or in said Insurrection or said Relief Expedition, so long as they remain unmarried.

(*e*) Fathers and mothers of soldiers or sailors who lost their lives in such wartime service, provided that only two thousand dollars of the taxable valuation of real property or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, of the real estate of any such father or mother held jointly by them shall be exempted; provided, further, that the words "father and mother" as appearing in this paragraph, shall be construed to include natural fathers and mothers, and fathers and mothers by adoption and persons who stood in loco parentis to such soldiers and sailors.

(*f*) Surviving spouses of soldiers or sailors who served in the armed forces of the United States between April sixth, nineteen hundred and seventeen and November eleventh, nineteen hundred and eighteen, or who were awarded the World War I Victory Medal; provided such spouses have remained unmarried and have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this section; and provided, further, that the whole estate, real and personal, of such spouse does not exceed in value the sum of twenty thousand dollars, exclusive of the value of the mortgage interest held by persons other than such spouse in such mortgaged real estate as may be included in such whole estate. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this paragraph will be required in any subsequent year in the city or town in which the exemption has been so allowed, except that the assessors may require an annual statement that such spouse has remained unmarried.

Twenty-second A, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces of the United States by reason of injury received or disease contracted while in such wartime service and in the line of duty, lost or have suffered permanent loss of use of one foot at or above the ankle or lost or have suffered permanent loss of use of one hand at or above the wrist, or who according to the records of the Veterans Administration by reason of injury received or disease contracted while in such service, is receiving a statutory award from the Veterans Administration for such loss or loss of sight of one eye, or who have been awarded the congressional medal of honor, the distinguished service cross, the navy cross or the air force cross to the amount of four thousand dollars of the taxable valuation of real property or the sum of three hundred and fifty dollars whichever would result in an abatement of the greater amount, of actual taxes due, in the case of each person, provided that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of three hundred and fifty dollars, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted. After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been granted.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable shall be borne by the city or town; the balance, up to two thousand dollars of exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second B, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth and who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to the date of filing for exemption under this clause, who according to the records of the Veterans Administration or of any branch of the armed forces by reason of such wartime service in the armed forces of the United States have suffered in the line of duty the loss or permanent loss of use of both feet at or above the ankle, or loss or permanent loss of use of both hands at or above the wrist or loss or permanent loss of use of one foot at or above the ankle and one hand at or above the wrist, or the loss of sight of both eyes as prescribed and certified by the Veterans Administration to the amount of eight thousand dollars of the taxable valuation of real property or the sum of seven hundred dollars, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of seven hundred dollars whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been so allowed.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to six thousand dollars of exemption or up to the sum of five hundred and twenty-five dollars, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second C, Real estate of soldiers and sailors and their spouses who are legal residents of the commonwealth who are veterans, as defined in clause forty-three of section seven of chapter four, and whose last discharge or release from the armed forces was under other than dishonorable conditions, and who were domiciled in Massachusetts for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, and who according to the records of the Veterans Administration by reason of such wartime service in the armed forces of the United States have suffered in the line of duty permanent and total disability, and who by reason of such disability have received assistance in acquiring "specially adapted housing" under laws administered by the Veterans Administration to the amount of ten thousand dollars of the taxable valuation of real property or the sum of eight hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person, and provided, further, that if said property be greater than a single family house then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of eight hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted.

After the assessors have allowed an exemption under this clause, no further evidence of the existence of the facts required by this clause shall be required in any subsequent year in the city or town in which the exemption has been so allowed.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance up to eight thousand dollars of exemption or up to the sum of seven hundred dollars, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-second D, Real estate to the amount of two thousand dollars of the taxable valuation of real property or the sum of one hundred and seventy-five dollars, whichever would result in an abatement of the greater amount of actual taxes due of the surviving spouses of soldiers or sailors who lost their lives in combat as members of the armed forces of the United States in military action at the islands of Quemoy and Matsu in the Pacific Ocean; provided, such surviving spouse has remained unmarried and has been domiciled in the commonwealth for five consecutive years next prior to the date for filing for exemption under this clause; and provided, further that said real estate is occupied by such surviving spouse as a domicile. No real estate shall be so exempt which has been conveyed to such surviving spouse to evade taxation. The amount of the exemption shall be borne by the commonwealth, and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected for this exemption.

Twenty-second E, Real estate of soldiers and sailors who are legal residents of the commonwealth and who are veterans as defined in clause forty-three of section seven of chapter four, and who, as a result of disabilities contracted while in such wartime service and in the line of duty, have a disability rating of one hundred per cent as determined by the Veterans Administration and are incapable of working, and who were domiciled in the commonwealth for at least six months prior to entering such service, or who have resided in the commonwealth for five consecutive years next prior to date of filing for exemption under this clause, to the amount of six thousand dollars of the taxable valuation of real property or the sum of five hundred and twenty-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, provided, that such real estate is occupied as his domicile by such person; and provided further, that if said property be greater than a single-family house, then only that value of so much of said house as is occupied by said person as his domicile or a proportionate part of five hundred and twenty-five dollars, whichever would result in an abatement of the greater amount of actual taxes due, shall be exempted.

After the assessors have allowed an exemption under this clause, the assessors shall require an annual statement certifying that the disability rating as determined by the Veterans Administration has not been reduced to less than one hundred per cent.

No real estate shall be so exempt which the assessors shall adjudge has been conveyed to such soldier or sailor to evade taxation.

Two thousand dollars of this exemption or up to the sum of one hundred and seventy-five dollars, whichever basis is applicable, shall be borne by the city or town; the balance, up to four thousand dollars of exemption or up to the sum of three hundred and fifty dollars, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Twenty-fourth, Bonds, notes or certificates of indebtedness of the United States.

Twenty-fifth, Bonds or certificates of indebtedness of the commonwealth issued since January first, nineteen hundred and six, and bonds, notes and certificates of indebtedness of any county, city, town, fire district, fire and water district, water district, sewer district, water and sewer district, light district, improvement district, water pollution abatement district, regional school district or regional refuse disposal district, in the commonwealth, issued on or after May first, nineteen hundred and eight, stating on their face that they are exempt from taxation in Massachusetts.

Twenty-sixth, Land classified under chapter sixty-one, except from the taxes provided for in said chapter.

Twenty-seventh, Property, other than real estate, the income from which is taxed under chapter sixty-two, or would be taxable thereunder if the property yielded income.

Twenty-ninth, Shares in partnerships, associations or trusts, in the case of shares the income of which is taxable under chapter sixty-two.

Thirtieth, Capital stock and personal property of co-operative banks.

Thirty-first, Stock in domestic business corporations, as defined in section thirty of chapter sixty-three, stock in domestic manufacturing corporations, as defined in section thirty-eight C of said chapter, and stock in domestic insurance companies subject to taxation under section twenty or twenty-two of said chapter.

Thirty-second, Stock in other corporations, domestic or foreign, subject to taxation under sections fifty-two A and fifty-eight of said chapter, in those years for which the corporations pay their corporate franchise taxes.

Thirty-third, Intangible property held by any fiduciary in the commonwealth.

Thirty-fourth, Shares of stock of banks, as defined in section one of chapter sixty-three, which banks are taxable under section two of chapter sixty-three.

Thirty-fifth, Motor vehicles and trailers subject to taxation or exempted from taxation under the provisions of chapter sixty A, irrespective of the date of registration thereof under chapter ninety.

Thirty-sixth, Mobile homes located in mobile home parks subject to the monthly license fee provided for under section thirty-two G of chapter one hundred and forty and mobile homes deemed, by section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended,[1] not to be located or present in or to have a situs in such city or town for the purposes of taxation in respect to personal property.

[1] 50 U.S.C.A.App. § 574.

Thirty-seventh, Real property, to the amount of five thousand dollars of the taxable valuation of real property, or the sum of four hundred and thirty-seven dollars and fifty cents, whichever would result in an abatement of the greater amount of actual taxes due, of a blind person who is a legal resident of the commonwealth, whether such property is owned by him separately or jointly or as a tenant in common; provided, that such property is occupied by such person as his domicile. No real property shall be so exempt which has been conveyed to such blind person to evade taxation.

Four thousand dollars of this exemption or the sum of three hundred and fifty dollars, whichever basis is applicable, shall be borne by the city or town, the balance up to one thousand dollars of the exemption or eighty-seven dollars and fifty cents, whichever basis is applicable, shall be borne by the commonwealth; and the state treasurer shall annually reimburse the city or town for the amount of the tax which otherwise would have been collected on account of this balance.

Thirty-eighth, In determining the valuation, for city and town tax purposes, of any privately owned airport, the value of any improvements on or to the landing area shall not be included, so long as the owner grants free use of said landing area to the general public for the landing, taking off and taxiing of aircraft; provided, said airport meets the minimum requirements set forth by the Massachusetts aeronautics commission in rules and regulations issued under section thirty-nine, chapter ninety, and is certified by the Massachusetts aeronautics commission to be included within the needs of civil aeronautics as established by the state airport plan prepared under section thirty-nine A of chapter ninety, and is approved for commercial operation by the Massachusetts aeronautics commission.

Fortieth, Air-raid, bomb or fall-out shelters constructed under standards established by the civil defense agency of the commonwealth or of the United States in or in connection with residential dwellings so long as such shelters shall be used exclusively for air-raid, bomb or fall-out protection.

Forty-first, Real property, to the amount of four thousand dollars of the taxable valuation of real property or the sum of five hundred dollars, whichever would amount in an abatement of the greater amount of taxes due, of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by said person as his domicile, or of a person who owns the same jointly with his spouse, either of whom has reached his seventieth birthday prior to the fiscal year for which an abatement is sought and occupied by them as their domicile, or of a person who has reached his seventieth birthday prior to the fiscal year for which an abatement is sought who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided: (A) that such person (1) has been domiciled in the commonwealth for the preceding ten years, (2) has so owned and occupied such real property or other real property in the commonwealth for five years, or (3) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth for five years and who otherwise qualifies under this clause; (B) that such person had, in the preceding year, gross receipts from all sources of less than six thousand dollars, or, if married, combined gross receipts with his spouse of less than seven thousand dollars, provided, however, that in computing the gross receipts of an applicant under this clause ordinary business expenses and losses may be deducted, but not personal or family expenses, and provided, further, that there shall be deducted from the total amount received by the applicant under the federal social security or railroad retirement and from any annuity, pension, or retirement plan established for employees of the United States government, the government of the commonwealth, or the government of any city, town, county, or special district, included in such gross receipts, an amount equivalent to the minimum payment then payable under said federal social security law, as determined by the commissioner of revenue, to a retired worker seventy years of age or over, if the applicant is unmarried, or to a retired worker and spouse, both of whom are seventy years of age or over, if the applicant is married; and (C) that such person had a whole estate, real and personal, not in excess of seventeen thousand dollars, or if married, not in excess of twenty thousand dollars, provided that real property occupied as his domicile shall not be included in computing the whole estate except for any portion of said property which produces income, provided however that a taxpayer may, at his option, elect to include the value of real property occupied as his domicile in computing the value of his whole estate. If such real property is included in the whole estate, the value of the whole estate shall not exceed forty thousand dollars, or if married, forty-five thousand dollars. Household furnishings and property already exempt under the twelfth, twentieth, twenty-first, and thirty-fifth clauses of this section shall not be included in computing the whole estate. In the case of the real estate owned by a person jointly or as a tenant in common with a person not his spouse, the amount of his exemption under this clause shall be that proportion of four thousand dollars valuation or the sum of five hundred dollars, whichever would result in an abatement of the greater amount of taxes due, which the amount of his interest in such property bears to the whole tax due; provided that no exemption shall be granted to any joint tenant or tenant in common unless the gross receipts from all sources whatsoever of each joint tenant or tenant in common is less than six thousand dollars or, if married, the combined gross receipts from all sources whatsoever of each joint tenant or tenant in common and his spouse is less than seven thousand dollars and unless the combined whole estate, real and personal, of each joint tenant or tenant in common is less than twelve thousand dollars or, if married, the combined whole estate, real and personal of each joint tenant in common and his spouse does not exceed fifteen thousand dollars; and provided, further, that no proportion of the exemption shall be denied to any applicant otherwise qualified for the reason that another joint tenant or tenant in common receives a proportion of the total exemption. In determining the total period of ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband and wife jointly. Where a portion of the real property occupied as a domicile of an applicant under this clause is located within a municipality other than the municipality in which the applicant is domiciled, and where the value of said property, or the taxes, assessed by the municipality in which such applicant is domiciled would result in his receiving less than the maximum exemption provided by this clause, that part of the property of such applicant within such other municipality shall be exempt to a value, or to an amount of tax, sufficient to grant the applicant the total maximum exemption provided by the clause. Any person who receives an exemption under the provisions of this clause shall not receive an exemption on the same property under any other provision of this section except clause Eighteen.

Forty-first A, Real property, to an amount determined as hereinafter provided, of a person sixty-five years of age or over and occupied by him as his domicile, of a person who owns the same jointly with his spouse, either of whom is sixty-five years of age or over, and occupied as their domicile, or of a person who owns the same jointly or as a tenant in common with a person not his spouse and occupied by him as his domicile; provided, that such person has been domiciled in the commonwealth for the preceding ten years and

(1) has so owned and occupied as his domicile such real property or other real property in the commonwealth for five years; or

(2) is a surviving spouse who inherits such real property and has occupied such real property or other real property in the commonwealth as his or her domicile for five years and who otherwise qualifies under this clause; and provided further that such person, and such person and his spouse, if married, had, during the preceding year, gross receipts from all sources not in excess of twenty thousand dollars.

In determining the total period ownership of an applicant for exemption under this clause, the time during which the same property was owned by a husband or wife individually shall be added to the period during which such property was owned by said husband

and wife jointly. In computing the gross receipts of such an applicant or of such an applicant and his spouse, if married, ordinary business expenses and losses may be deducted but not personal and family expenses.

Any such person may, on or before December fifteenth of each year, apply to the board of assessors for an exemption of all or part of such real property from taxation during such year; provided, however, that in the case of real estate owned by a person jointly or as a tenant in common with a person not his spouse, the exemption shall not exceed that proportion of total valuation which the amount of his interest in such property bears to the whole tax due. The board of assessors shall grant such exemption provided that the owner or owners of such real property have entered into a tax deferral and recovery agreement with said board of assessors on behalf of the city or town. The said agreement shall provide:

(1) that no sale or transfer of such real property may be consummated unless the taxes which would otherwise have been assessed on such portion of the real property as is so exempt have been paid, with interest at the rate of eight per cent per annum;

(2) that the total amount of such taxes due, plus interest, for the current and prior years does not exceed fifty per cent of the owner's proportional share of the full and fair cash value of such real property;

(3) that upon the demise of the owner of such real property, the heirs-at-law, assignees or devisees shall have first priority to said real property by paying in full the total taxes which would otherwise have been due, plus interest; provided, however, if such heir-at-law, assignee or devisee is a surviving spouse who enters into a tax deferral and recovery agreement under this clause, payment of the taxes and interest due shall not be required during the life of such surviving spouse. Any additional taxes deferred, plus interest, on said real property under a tax deferral and recovery agreement signed by a surviving spouse shall be added to the taxes and interest which would otherwise have been due, and the payment of which has been postponed during the life of such surviving spouse, in determining the fifty per cent requirement of subparagraph (2);

(4) that if the taxes due, plus interest, are not paid by the heir-at-law, assignee or devisee or if payment is not postponed during the life of a surviving spouse, such taxes and interest shall be recovered from the estate of the owner; and

(5) that any joint owner or mortgagee holding a mortgage on such property has given written prior approval for such agreement, which written approval shall be made a part of such agreement.

In the case of each tax deferral and recovery agreement entered into between the board of assessors and the owner or owners of such real property, the said board of assessors shall forthwith cause to be recorded in the registry of deeds of the county or district in which the city or town is situated a statement of their action which shall constitute a lien upon the land covered by such agreement for such taxes as have been assessed under the provisions of this chapter, plus interest as hereinafter provided. The statement shall name the owner or owners and shall include a description of the land adequate for identification. Unless such a statement is recorded the lien shall not be effective with respect to a bona fide purchaser or other transferee without actual knowledge of such lien. The filing fee for such statement shall be paid by the city or town and shall be added to and become a part of the taxes due.

Forty-second, Real estate of the surviving spouse, until remarried, of a police officer or firefighter killed in the line of duty as such police officer or firefighter to the amount of eight thousand dollars of the taxable valuation of real property or the sum of seven hundred dollars, whichever would result in an abatement of the greater amount of actual taxes due; provided that such real estate is owned, and occupied by such surviving spouse as a domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such spouse to evade taxation.

Forty-third, Real estate of the surviving minor children, including adopted children, of a police officer or firefighter killed in the line of duty as such police officer or firefighter to the amount of eight thousand dollars of the taxable valuation of real property or the sum of seven hundred dollars, whichever would result in an abatement of the greater amount of actual taxes due; provided that such real estate is owned and occupied by such children as their domicile, and provided, further, that no real estate shall be so exempt which the assessors shall adjudge has been conveyed to such children to evade taxation.

Forty-fourth, Any structure, building, device, appliance, machinery, equipment or other property, whether consisting of real or tangible personal property, or a combination of both, which is constructed, installed or placed in operation, in whole or in part, for the purpose of eliminating industrial waste or reducing such waste to a level of toxicity that is not injurious to fish, fowl, animal life or acquatic vegetation and thereby abating or preventing the pollution of the waters of the commonwealth or for the purpose of abating, preventing or eliminating industrial pollution of the atmosphere of the commonwealth. This exemption shall apply to facilities for the treatment, neutralization or stabilization of industrial waste or industrial air pollution from a point immediately preceding the point of such treatment, neutralization or stabilization to the point of disposal, including the necessary pumping and transmitting facilities, but excluding such facilities installed for the primary purpose of salvaging materials which are usable in the manufacturing process or are marketable. The term "industrial waste" and the term "industrial air pollution", as used in this section, shall mean any liquid, gaseous, solid or waste substance, or a combination thereof, resulting from any process of industry, manufacture, trade or business or from the development or recovery of any natural resources, which may cause or might reasonably be expected to cause pollution of the waters or the atmosphere of the commonwealth.

If any such structure, building, device, appliance, machinery, equipment or other property is used solely and in its entirety for the elimination or control of water or air pollution, the exemption granted hereunder shall be total; if, however, only a portion of such structure, building, device, appliance, machinery, equipment or other property is used for the elimination or control of water or air pollution, the exemption shall be prorated as follows: for structures and buildings, the ratio which the area or volume, as applicable, thereof used solely for pollution control bears to the entire area or volume; for devices, appliances, machinery, equipment or other property, the ratio which the operating time devoted solely to pollution control bears to the total operating time.

No exemption shall be granted under this clause unless the director of the division of water pollution control in the department of environmental management or the director of the air pollution control agency in the commonwealth, as the case may be, certifies to the assessors of the city or town involved that such structure, building, device, appliance, machinery, equipment or other property is effective in eliminating or reducing pollution to an acceptable level.

Forty-fifth, Any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

Forty-fifth A, Any hydropower facility, the construction of which was commenced after January first, nineteen hundred and seventy-nine; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of completion of the construction of such facility; and provided further, that such facility shall be exempt only if the owner thereof has entered into an agreement with the city or town, wherein it is located, to make a payment in lieu of taxes which shall be at least five per cent of its gross income in the preceding calendar year. For the purposes of this clause, hydropower facility shall mean any real property used in the production of energy from the water power of an existing dam, including land, all rights, easements and other interests appurtenant thereto, excluding transmission lines from such facilities, and all buildings and other improvements situated thereon, and any personal property situated upon such real property.

Forty-sixth, Real estate, owned by an economic development corporation whose purpose is to retain and expand job opportunities and which is organized under chapter one hundred and eighty, from the date of said real estate's acquisition until such real property is leased, rented, or otherwise disposed of; provided said exemption for such real property should not extend beyond a total period of seven years; and provided, further, that if the whole or any part of any such real estate is used for other than the purpose of said corporation and derives any income from such use, such real estate or part thereof, as the case may be, shall not be exempt.

Forty-seventh, Real property subject to taxation under section ten of chapter one hundred and twenty-one A.

Forty-eighth, Land classified under chapter sixty-one B, except from taxes provided for in said chapter.

Amended by St.1932, c. 114, § 4; St.1933, c. 198, § 1; St.1935, c. 294; St.1936, c. 81; St.1936, c. 362, § 1; St.1937, c. 132; St.1938, c. 47; St. 1938, c. 186, § 4; St.1938, c. 317; St.1939, c. 24, § 2; St.1939, c. 451, §§ 19, 20; St.1941, c. 227, §§ 1, 2; St.1941, c. 467; St.1941, c. 482; St. 1943, c. 559; St.1945, c. 627, § 1; St.1946, c. 579; St.1947, c. 83, § 1; St.1947, c. 310; St.1947, c. 612, § 1; St.1947, c. 647; St.1948, c. 560; St. 1948, c. 644, §§ 1, 2; St.1949, c. 206; St.1949, c. 236; St.1949, c. 534, §§ 1, 2; St.1949, c. 732; St.1950, c. 796; St.1951, c. 272; St.1951, c. 640, § 1; St.1951, c. 641, § 10; St.1951, c. 667, § 2; St.1951, c. 675; St.1951, c. 730; St.1952, c. 232, § 1; St.1952, c. 583, § 2; St.1953, c. 231; St.1953, c. 347; St.1953, c. 358; St.1953, c. 379; St.1953, c. 654, § 28; St.1954, c. 245; St.1954, c. 341; St.1954, c. 351; St.1954, c. 435, § 1; St.1954, c. 683, §§ 1, 2; St.1955, c. 312; St.1955, c. 403, § 3; St.1956, c. 381, §§ 1 to 3; St.1956, c. 384; St.1956, c. 400, § 1; St.1956, c. 651; St.1956, c. 690, § 3; St.1957, c. 444, § 2; St.1957, c. 500, § 1; St.1957, c. 525, §§ 1 to 4; St.1957, c. 541; St.1958, c. 282, §§ 1, 2; St.1959, c. 88, § 2; St.1959, c. 233, § 1; St.1959, c. 444, § 1; St.1960, c. 18; St.1960, c. 316; St.1960, c. 414, § 1; St.1960, c. 714; St.1960, c. 764, § 1; St.1960, c. 811, §§ 1, 2; St.1961, c. 539; St.1962, c. 281; St.1962, c. 439; St.1962, c. 644, § 2; St.1962, c. 666, §§ 1 to 4; St. 1963, c. 160, §§ 8 to 11; St.1963, c. 345; St.1963, c. 808, § 1; St.1964, c. 69; St.1964, c. 285, § 1; St.1964, c. 354, § 1; St.1964, c. 502, § 6; St.1964, c. 681, § 1; St.1964, c. 715, § 1; St.1965, c. 212, § 1; St.1965, c. 267, §§ 1, 2; St. 1965, c. 398; St.1965, c. 615, § 1; St.1965, c. 620, §§ 1, 2; St.1965 c. 748, § 2; St.1965, c. 881; St.1966, c. 216, § 1; St.1966, c. 262; St.1966, c. 294,

§ 1; St.1966, c. 359, §§ 1 to 4; St.1966, c. 371; St.1966, c. 419; St.1966, c. 700, §§ 1, 2; St.1966, c. 728; St.1967, c. 212, § 1; St.1968, c. 464, § 1; St.1968, c. 549; St.1969, c. 129; St.1969, c. 292, §§ 1 to 4; St.1969, c. 884, § 4; St.1970, c. 179, § 1; St.1970, c. 219, § 1; St.1970, c. 234, § 1; St. 1970, c. 270, §§ 1, 2; St.1970, c. 456, § 1; St.1970, c. 600, § 1; St.1971, c. 449, § 1; St.1971, c. 555, §§ 3, 4; St.1971, c. 1069, § 1; St.1971, c. 1110, §§ 1 to 10; St.1972, c. 144, § 1; St.1972, c. 186, § 1; St.1972, c. 707, § 2; St.1973, c. 696, §§ 1, 2; St.1973, c. 723, § 1; St.1973, c. 872, § 1; St.1974, c. 287, § 1; St.1974, c. 347, § 1; St.1974, c. 811, §§ 1, 2; St.1974, c. 823; St.1974, c. 831, §§ 1 to 3; St.1975, c. 283; St.1975, c. 706, §§ 112, 113; St.1975, c. 734, §§ 1, 2; St.1976, c. 89; St.1976, c. 263, § 1; St.1977, c. 889, §§ 2 to 5; St.1977, c. 964; St.1977, c. 967, § 1; St.1977, c. 992, § 2; St.1978, c. 258; St.1978, c. 388; St.1978, c. 435, § 1; St.1978, c. 514, §§ 73, 74: St.1978, c. 514, § 74; St.1978, c. 580, §§ 17 to 29; St.1978, c. 581, § 3; St.1979, c. 339, § 1; St.1979, c. 367; St.1979, c. 713, § 3; St. 1979, c. 777, § 1.

TITLE X

PUBLIC RECORDS

CHAPTER 66

PUBLIC RECORDS

Sec.

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14. Surrender of records by retiring officer.
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17. Municipality in which records to be kept; penalty.
17C. Failure to maintain public records of meetings; orders to maintain.
18. Application of chapter.

§ 1. Supervision of public records; powers and duties

The supervisor of public records, in this chapter called the supervisor of records, shall take necessary measures to put the records of the commonwealth, counties, cities or towns in the custody and condition required by law and to secure their preservation. He shall see that the records of churches, parishes or religious societies are kept in the custody and condition contemplated by the various laws relating to churches, parishes or religious societies, and for these purposes he may expend from the amount appropriated for expenses such amount as he considers necessary. The supervisor of records shall adopt regulations pursuant to the provisions of chapter thirty A to implement the provisions of this chapter.

St.1945, c. 580, § 7; St.1976, c. 438, § 1.

§ 3. "Record," defined; quality of paper and film; microfilm records

The word "record" in this chapter shall mean any written or printed book or paper, or any photograph, microphotograph, map or plan. All written or printed public records shall be entered or recorded on paper made of linen rags and new cotton clippings, well sized with animal sizing and well finished, or on one hundred per cent bond paper sized with animal glue or gelatin, and preference shall be given to paper of American manufacture marked in water line with the name of the manufacturer. All photographs, microphotographs, maps and plans which are public records shall be made of materials approved by the supervisor of records. Public records may be made by handwriting, or by typewriting, or in print, or by the photographic process, or by the microphotographic process, or by any combination of the same. When the photographic or microphotographic process is used, the recording officer, in all instances where the photographic print or microphotographic film is illegible or indistinct, may make, in addition to said photographic or microphotographic record, a typewritten copy of the instrument, which copy shall be filed in a book kept for the purpose. In every such instance the recording officer shall cause cross references to be made between said photographic or microphotographic record and said typewritten record. If in the judgment of the recording officer an instrument offered for record is so illegible that a photographic or microphotographic record thereof would not be sufficiently legible, he may, in addition to the making of such record, retain the original in his custody, in which case a photographic or other attested copy thereof shall be given to the person offering the same for record, or to such person as he may designate.

Amended by St.1936, c. 305; St.1941, c. 662, § 1; St.1975, c. 282.

§ 4. Regulation of recording materials and devices; mandamus

No ink shall be used upon any permanent public record except ink of such a standard as established and approved by the supervisor of records, and no ribbon, pad or other device used for printing by typewriting machines, or stamping pad, or any ink contained in such ribbon, pad, device, stamping pad or carbon paper, shall be used upon any permanent public record, nor shall any photographic machine or device or chemical used in connection therewith be used in making any permanent public record, except such as has been approved by the supervisor of records, who may cancel his approval if he finds that any article so approved is inferior to the standard established by him. The supreme judicial or superior court shall have jurisdiction in mandamus, on petition of the supervisor of records and pursuant to section five of chapter two hundred and forty-nine, to order compliance with the provisions of this section.

Amended by St.1950, c. 310; St.1973, c. 1050, § 2; St.1977, c. 80, § 2.

§ 5. Municipal records; copies

County commissioners, city councils and selectmen may cause copies of records of counties, cities or towns, of town proprietaries, of proprietors of plantations, townships or common lands, relative to land situated in their county, city or town or of easements relating thereto, to be made for their county, city or town, whether such records are within or without the commonwealth, and such records within the commonwealth may be delivered by their custodians to any county, city or town for such copying. City councils and selectmen may also cause copies to be made of the records of births, baptisms, marriages and deaths kept by a church or parish in their city or town.

§ 5A. Records of meetings of boards and commissions; contents

The records, required to be kept by sections eleven A of chapter thirty A, nine F of chapter thirty-four and twenty-three A of chapter thirty-nine, shall report the names of all members of such boards and commissions present, the subjects acted upon, and shall record exactly the votes and other official actions taken by such boards and commissions; but unless otherwise required by the governor in the case of state boards, commissions and districts, or by the county commissioners in the case of county boards and commissions, or the governing body thereof in the case of a district, or by ordinance or by-law of the city or town, in the case of municipal boards, such records need not include a verbatim record of discussions at such meetings.

Added by St.1958, c. 626, § 10. Amended by St.1960, c. 427, § 6; St.1964, c. 323, § 2.

§ 6. Records of public proceedings; preparation; custody

Every department, board, commission or office of the commonwealth or of a county, city or town, for which no clerk is otherwise provided by law, shall designate some person as clerk, who shall enter all its votes, orders and proceedings in books and shall have the custody of such books, and the department, board, commission or office shall designate an employee or employees to have the custody of its other public records. Every sole officer in charge of a department or office of the commonwealth or of a county, city or town having public records in such department or office shall have the custody thereof.

§ 7. Custody of old and other records

Every town clerk shall have the custody of all records of proprietors of towns, townships, plantations or common lands, if the towns, townships, plantations or common lands to which such records relate, or the larger part thereof, are within his town and the proprietors have ceased to be a body politic. The state secretary, clerks of the county commissioners and city or town clerks shall respectively have the custody of all other public records of the commonwealth or of their respective counties, cities or towns, if no other disposition of such records is made by law or ordinance, and shall certify copies thereof.

§ 8. Preservation and destruction of records, books and papers

Every original paper belonging to the files of the commonwealth or of any county, city or town, bearing date earlier than the year eighteen hundred and seventy, every book of registry or record, except books which the supervisor of public records determines may be destroyed, every town warrant, every deed to the commonwealth or to any county, city or town, every report of an agent, officer or committee relative to bridges, public ways, sewers or other state, county or municipal interests not required to be recorded in a book and not so recorded, shall be preserved and safely kept; and every other paper belonging to such files shall be kept for seven years after the latest original entry therein or thereon, unless otherwise provided by law or unless such records are included in disposal schedules approved by the records conservation board for state records or by the supervisor of public records for county, city, or town records; and no such paper shall be destroyed without the written approval of the supervisor of records. Notwithstanding the foregoing, the register of deeds in any county may, without such written approval, destroy any papers pertaining to attachments or to the dissolution or discharge thereof in the files of his office following the expiration of twenty years after the latest original entry therein or thereon, unless otherwise specifically provided by law, and he may destroy all original instruments left for record and not called for within five years after the recording thereof.

Amended by St.1943, c. 128; St.1949, c. 395, § 2; St.1962, c. 427, § 3; St.1974, c. 141.

§ 8A. Destruction of certain records by city and town clerks if micro-photographed

Any provision of general or special law to the contrary notwithstanding, the clerk of any city or town, with the written approval of the supervisor of records, may destroy any index of instruments made by any clerk of such city or town under the provision of law now embodied in section fifteen of chapter forty-one or any original record made by any such clerk under any of the provisions of law now embodied in section eleven of chapter two hundred and nine, section three of chapter two hundred and fifty-five, or any similar statute; provided, that such index or record, as the case may be, has been, or shall have been, micro-photographed, and that twenty years has, or shall have, expired after the making of such index or record. The micro-photograph of any index or record so destroyed shall have the same force and effect as the original index or record from which such micro-photograph was made.

Added by St.1951, c. 56.

§ 9. Preservation and copying of worn, etc., records

Every person having custody of any public record books of the commonwealth, or of a county, city or town shall, at its expense, cause them to be properly and substantially bound. He shall have any such books, which may have been left incomplete, made up and completed from the files and usual memoranda, so far as practicable. He shall cause fair and legible copies to be seasonably made of any books which are worn, mutilated or are becoming illegible, and cause them to be repaired, rebound or renovated. He may cause any such books to be placed in the custody of the supervisor of records, who may have them repaired, renovated or rebound at the expense of the commonwealth, county, city or town to which they belong. Whoever causes such books to be so completed or copied shall attest them, and shall certify, on oath, that they have been made from such files and memoranda or are copies of the original books. Such books shall then have the force of the original records.

§ 10. Public inspection of records; copies; compliance with requests; remedies

(*a*) Every person having custody of any public record, as defined in clause Twenty-sixth of section seven of chapter four, shall, at reasonable times and without unreasonable delay, permit it, or any segregable portion of a record which is an independent public record, to be inspected and examined by any person, under his supervision, and shall furnish one copy thereof upon payment of a reasonable fee. Every person for whom a search of public records is made shall, at the direction of the person having custody of such records, pay the actual expense of such search.

(*b*) A custodian of a public record shall, within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered in hand to the office of the custodian or mailed via first class mail. If the custodian refuses or fails to comply with such a request, the person making the request may petition the supervisor of records for a determination whether the record requested is public. Upon the determination by the supervisor of records that the record is public, he shall order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order, the supervisor of records may notify the attorney general or the appropriate district attorney thereof who may take whatever measures he deems necessary to insure compliance with the provisions of this section. The administrative remedy provided by this section shall in no way limit the availability of the administrative remedies provided by the commissioner of administration and finance with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the supreme judicial or superior court shall have jurisdiction to order compliance.

(*c*) In any court proceeding pursuant to paragraph (*b*) there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

Amended by St.1948, c. 550, § 5; St.1973, c. 1050, § 3; St.1976, c. 438, § 2; St.1978, c. 294.

§ 11. Fireproof vaults and safes

Officers in charge of a state department, county commissioners, city councils and selectmen shall, at the expense of the commonwealth, county, city or town, respectively, provide and maintain fireproof rooms, safes or vaults for the safe keeping of the public records of their department, county, city or town, other than the records in the custody of teachers of the public schools, and shall furnish such rooms with fittings of non-combustible materials only.

§ 12. Arrangement of records

All such records shall be kept in the rooms where they are ordinarily used, and so arranged that they may be conveniently examined and referred to. When not in use, they shall be kept in the fireproof rooms, vaults or safes provided for them.

§ 13. Custodian to demand records; compelling compliance

Whoever is entitled to the custody of public records shall demand the same from any person having possession of them, who shall forthwith deliver the same to him. Upon complaint of any public officer entitled to the custody of a public record, the superior court shall have jurisdiction in equity to compel any person unlawfully having such record in his possession to deliver the same to the complainant.

Amended by St.1951, c. 200.

§ 14. Surrender of records by retiring officer

Whoever has custody of any public records shall, upon the expiration of his term of office, employment or authority, deliver over to his successor all such records which he is not authorized by law to retain, and shall make oath that he has so delivered them, according as they are the records of the commonwealth or of a county, city or town, before the state secretary, the clerk of the county commissioner or the city or town clerk, who shall, respectively, make a record of such oath.

§ 15. Penalties

Whoever unlawfully keeps in his possession any public record or removes it from the room where it is usually kept, or alters, defaces, mutilates or destroys any public record or violates any provision of this chapter shall be punished by a fine of not less than ten nor more than five hundred dollars, or by imprisonment for not more than one year, or both. Any public officer who refuses or neglects to perform any duty required of him by this chapter shall for each month of such neglect or refusal be punished by a fine of not more than twenty dollars.

Amended by St.1939, c. 40.

§ 17. Municipality in which records to be kept; penalty

Except as otherwise provided by law, all public records shall be kept in the custody of the person having the custody of similar records in the county, city or town to which they originally belonged, and if not in his custody shall be demanded by him of the person having possession thereof, and shall forthwith be delivered by such person to him. Whoever refuses or neglects to perform any duty required of him by this section shall be punished by a fine of not more than twenty dollars.

§ 17C. Failure to maintain public records of meetings; orders to maintain

Upon proof of failure of a governmental body as defined in section eleven A of chapter thirty A, section nine F of chapter thirty-four and section twenty-three A of chapter thirty-nine, or by any member or officer thereof to carry out any of the provisions prescribed by this chapter for maintaining public records, a justice of the supreme judicial or the superior court sitting within and for the county in which such governmental body acts or, in the case of a governmental body of the commonwealth, sitting within and for any county, shall issue an appropriate order requiring such governmental body or member or officer thereof to carry out the provisions of this chapter. Such order may be sought by complaint of three or more registered voters, by the attorney general, or by the district attorney for the county in which the governmental body acts. The order of notice on the complaint shall be returnable no later than ten days after the filing thereof and the complaint shall be heard and determined on the return day or on such day thereafter as the court shall fix, having regard to the speediest possible determination of the cause consistent with the rights of the parties; provided, however, that orders with respect to any of the matters referred to in this section may be issued at any time on or after the filing of the complaint without notice when such order is necessary to fulfill the purposes of this section. In the hearing of any such complaint the burden shall be on the respondent to show by a preponderance of the evidence that the actions complained of in such complaint were in accordance with and authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. All processes may be issued from the clerk's office in the county in which the action is brought and, except as aforesaid, shall be returnable as the court orders.

Any such order may also, when appropriate, require the records of any such meeting of a governmental body to be made a public record unless it shall have been determined by such justice that the maintenance of secrecy with respect to such records is authorized by section eleven B of chapter thirty A, by section nine G of chapter thirty-four or by section twenty-three B of chapter thirty-nine. The remedy created hereby is not exclusive, but shall be in addition to every other available remedy.

Added by St.1975, c. 303, § 4. Amended by St.1976, c. 397, § 7.

§ 18. Application of chapter

This chapter shall not apply to the records of the general court, nor shall declarations, affidavits and other papers filed by claimants in the office of the commissioner of veterans' services, or records kept by him for reference by the officials of his office, be public records.

Amended by St.1945, c. 393, § 6.

CHAPTER 66A

FAIR INFORMATION PRACTICES

Sec.
1. Definitions.
2. Holders maintaining personal data system; duties.
3. Rules and regulations.

§ 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly indicates otherwise:

"Agency", any agency of the executive branch of the government, including but not limited to any constitutional or other office, executive office, department, division, bureau, board, commission or committee thereof; or any authority created by the general court to serve a public purpose, having either statewide or local jurisdiction.

"Automated personal data system", a personal data system in which personal data is stored, in whole or in part, in a computer or in electronically controlled or accessible files.

"Computer accessible", recorded on magnetic tape, magnetic film, magnetic disc, magnetic drum, punched card, or optically scannable paper or film.

"Criminal justice agency", an agency at any level of government which performs as its principal function activity relating to (a) the apprehension, prosecution, defense, adjudication, incarceration, or rehabilitation of criminal offenders; or (b) the collection, storage, dissemination, or usage of criminal offender record information.

"Data subject", an individual to whom personal data refers. This term shall not include corporations, corporate trusts, partnerships, limited partnerships, trusts or other similar entities.

"Holder", an agency which collects, uses, maintains or disseminates personal data or any person or entity which contracts or has an arrangement with an agency whereby it holds personal data as part or as a result of performing a governmental or public function or purpose. A holder which is not an agency is a holder, and subject to the provisions of this chapter, only with respect to personal data so held under contract or arrangement with an agency.

"Manual personal data system", a personal data system which is not an automated or other electronically accessible or controlled personal data system.

"Personal data", any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, as defined in clause Twenty-sixth of section seven of chapter four and shall not include intelligence information, evaluative information or criminal offender record information as defined in section one hundred and sixty-seven of chapter six.

"Personal data system", a system of records containing personal data, which system is organized such that the data are retrievable by use of the identity of the data subject.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 249, § 1; St.1977, c. 691, § 6.

§ 2. Holders maintaining personal data system; duties

Every holder maintaining personal data shall:

(*a*) identify one individual immediately responsible for the personal data system who shall insure that the requirements of this chapter for preventing access to or dissemination of personal data are followed;

(*b*) inform each of its employees having any responsibility or function in the design, development, operation, or maintenance of the personal data system, or the use of any personal data contained therein, of each safeguard required by this chapter, of each rule and regulation promulgated pursuant to section three which pertains to the operation of the personal data system, and of the civil remedies described in section three B of chapter two hundred and fourteen available to individuals whose rights under chapter sixty-six A are allegedly violated;

(*c*) not allow any other agency or individual not employed by the holder to have access to personal data unless such access is authorized by statute or regulations which are consistent with the purposes of this chapter or is approved by the data subject whose personal data are sought if the data subject is entitled to access under clause (*i*). Medical or psychiatric data may be made available to a physician treating a data subject upon the request of said physician, if a medical or psychiatric emergency arises which precludes the data subject's giving approval for the release of such data, but the data subject shall be given notice of such access upon termination of the emergency. A holder shall provide lists of names and addresses of applicants for professional licenses and lists of professional licensees to associations or educational organizations recognized by the appropriate professional licensing or examination board. A holder shall comply with a data subject's request to disseminate his data to a third person if practicable and upon payment, if necessary, of a reasonable fee;

(*d*) take reasonable precautions to protect personal data from dangers of fire, theft, flood, natural disaster, or other physical threat;

(*e*) comply with the notice requirements set forth in section sixty-three of chapter thirty;

(*f*) in the case of data held in automated personal data systems, and to the extent feasible with data held in manual personal data systems, maintain a complete and accurate record of every access to and every use of any personal data by persons or organizations outside of or other than the holder of the data, including the identity of all such persons and organizations which have gained access to the personal data and their intended use of such data and the holder need not record any such access of its employees acting within their official duties;

(*g*) to the extent that such material is maintained pursuant to this section, make available to a data subject upon his request in a form comprehensible to him, a list of the uses made of his personal data, including the identity of all persons and organizations which have gained access to the data;

(*h*) maintain personal data with such accuracy, completeness, timeliness, pertinance and relevance as is necessary to assure fair determination of a data subject's qualifications, character, rights, opportunities, or benefits when such determinations are based upon such data;

(*i*) inform in writing an individual, upon his request, whether he is a data subject, and if so, make such data fully available to him or his authorized representative, upon his request, in a form comprehensible to him, unless doing so is prohibited by this clause or any other statute. A holder may withhold from a data subject for the period hereinafter set forth, information which is currently the subject of an investigation and the disclosure of which would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest, but this sentence is not intended in any way to derogate from any right or power of access the data subject might have under administrative or judicial discovery procedures. Such information may be withheld for the time it takes for the holder to complete its investigation and commence an administrative or judicial proceeding on its basis, or one year from the commencement of the investigation or whichever occurs first. In making any disclosure of information to a data subject pursuant to this chapter the holder may remove personal identifiers relating to a third person, except where such third person is an officer or employee of government acting as such and the data subject is not. No holder shall rely on any exception contained in clause Twenty-sixth of section seven of chapter four to withhold from any data subject personal data otherwise accessible to him under this chapter.

(*j*) establish procedures that (1) allow each data subject or his duly authorized representative to contest the accuracy, completeness, pertinence, timeliness, relevance or dissemination of his personal data or the denial of access to such data maintained in the personal data system and (2) permit personal data to be corrected or amended when the data subject or his duly authorized representative so requests and there is no disagreement concerning the change to be made or, when there is disagreement with the data subject as to whether a change should be made, assure that the data subject's claim is noted and included as part of the data subject's personal data and included in any subsequent disclosure or dissemination of the disputed data;

(*k*) maintain procedures to ensure that no personal data are made available in response to a demand for data made by means of compulsory legal process, unless the data subject has been notified of such demand in reasonable time that he may seek to have the process quashed;

(*l*) not collect or maintain more personal data than are reasonably necessary for the performance of the holder's statutory functions.

Added by St.1975, c. 776, § 1. Amended by St.1976, c. 249, § 2; St.1977, c. 691, §§ 7 to 12.

§ 3. Rules and regulations

The secretary of each executive office shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to all agencies, departments, boards, commissions, authorities, and instrumentalities within each of said executive offices subject to the approval of the commissioner of administration. The department of community affairs shall promulgate rules and regulations to carry out the purposes of this chapter which shall be applicable to local housing and redevelopment authorities of the cities and towns. Any agency not within any such executive office shall be subject to the regulations of the commissioner of administration. The attorney general, the state secretary, the state treasurer and the state auditor shall adopt applicable regulations for their respective departments.

Added by St.1975, c. 776, § 1. Amended by St.1977, c. 691, § 13.

TITLE XII

EDUCATION

CHAPTER 71

PUBLIC SCHOOLS

Sec.
1. Maintenance; double sessions; subjects of instruction; twelve-month school year; rules and regulations.
3. Physical education.
10. Expenses of physically disabled children.

SCHOOL COMMITTEES

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53A. Employment of medical personnel by superintendency district or union; compensation; removal.
53B. Towns within a superintendency district or union; liability for appointing physicians and nurses.
54. Physical examination of school personnel.
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55. Contagious diseases; regulations.
55A. Sick, injured or incapacitated pupils; procedure for handling; emergency first aid or transportation; teachers, et al. exempted from civil liability.
55B. Regulation of communicable tuberculosis; periodic examination of school personnel; sick leave with pay for afflictees.
55C. Eye protection devices.
56. Sick children; notification to parents.
57. Physical examination of pupils.

SCHOOLHOUSES

72. Sale of lunches.
80. Lunch period for teachers.

§ 1. Maintenance; double sessions; subjects of instruction; twelve-month school year; rules and regulations

Every town shall maintain, for at least the number of days required by the board of education in each school year unless specifically exempted as to any one year by said board, a sufficient number of schools for the instruction of all children who may legally attend a public school therein. No town shall hold double sessions in any public school, if in any other public school of comparable grade levels in such town there are vacant spaces for more than thirty-five children, the number of such vacant spaces to be computed without exceeding a maximum of thirty-five children to a classroom. The board of education may suspend the application of the preceding sentence in a particular town for a limited period. Such schools shall be taught by teachers of competent ability and good morals, and shall give instruction and training in orthography, reading, writing, the English language and grammar, geography, arithmetic, drawing, music, the history and constitution of the United States, the duties of citizenship, health education, physical education and good behavior. Instruction in health education shall include, but shall not be limited to: consumer health, ecology, community health, body structure and function, safety, nutrition, fitness and body dynamics, dental health, emotional development, and training in the administration of first aid, including cardiopulmonary resuscitation. The department of education shall pay for the cost of any such instruction in cardiopulmonary resuscitation; provided, however, that a school committee may by majority vote decide that such instruction shall not be offered. In connection with physiology and hygiene, instruction as to the effects of alcoholic drinks and of stimulants, including tobacco, and narcotics on the human system, as to tuberculosis and its prevention, as to detection and prevention of breast and uterine cancer, and as to fire safety, including instruction in the flammable qualities of certain fabrics, and to the prevention and treatment of burn injuries, shall be given to all pupils in all schools under public control, except schools maintained solely for instruction in particular subject areas. No pupil shall be required to take or participate in instruction on disease, its symptoms, development and treatment, whose parent or guardian shall object thereto in writing on the grounds such instruction conflicts with his sincerely held religious beliefs, and no pupil so exempt shall be penalized by reason of such exemption. Such other subjects as the school committee considers expedient may be taught in the public schools. The board of education shall adopt rules and regulations for the establishment of a twelve-month school year. Any city, town or school district by vote of its school committee may maintain and operate on a continuous twelve-month basis a sufficient number of schools for the instruction of all children who may legally attend a public school therein in accordance with such rules and regulations. Nothing herein contained shall be construed as to authorize said board to require the establishment of a twelve-month school year in any city, town or school district the school committee of which has not voted to establish, maintain and operate such a twelve-month school year.

Amended by St.1953, c. 137; St.1962, c. 11; St.1962, c. 301, § 1; St.1965, c. 572, § 14; St.1966, c. 187; St.1971, c. 922, § 1; St.1972, c. 66; St.1973, c. 651; St.1974, c. 753; St.1977, c. 408; St.1977, c. 916.

§ 3. Physical education

Physical education shall be taught as a required subject in all grades for all students in the public schools for the purpose of promoting the physical well-being of such students. Instruction in physical education may include calisthenics, gymnastics and military drill; but no pupil shall be required to take part in any military exercise if his parent or guardian is of any religious denomination conscientiously opposed to bearing arms, or is himself so opposed, and the school committee is so notified in writing; and no pupil shall be required to take part in physical education exercises if a licensed physician certifies in writing that in his opinion such physical education exercises would be injurious to the pupil.

Amended by St.1962, c. 301, § 2; St.1966, c. 150; St.1979, c. 81.

§ 10. Expenses of physically disabled children

If the school committee of a town of less than five hundred families or householders not maintaining a public high school offering four years of instruction, pays, with the approval of the department, for the instruction of a pupil who by reason of physical disability is unable to attend a high school in another town, the commonwealth shall reimburse the town therefor under the same conditions and to the same amount as for tuition in such a high school, and for transportation thereto, but not exceeding one hundred dollars a year in lieu of tuition plus one dollar and fifty cents per week of actual instruction in lieu of transportation.

SCHOOL COMMITTEES

§ 53. School physicians and nurses

The school committee shall appoint one or more school physicians and registered nurses, shall assign them to the public schools within its jurisdiction, shall provide them with all proper facilities for the performance of their duties and shall assign one or more physicians to the examination of children who apply for health certificates required by section eighty-seven of chapter one hundred and forty-nine, but in cities where the medical inspection hereinafter prescribed is substantially provided by the board of health, said board shall appoint and assign the school physicians and registered nurses. The department may exempt towns having a valuation of less than one million dollars from so much of this section as relates to school nurses.

Amended by St.1974, c. 411, § 1.

§ 53A. Employment of medical personnel by superintendency district or union; compensation; removal

A superintendency district formed and conducted under the provisions of section sixty, or a superintendency union formed and conducted under the provisions of sections sixty-one to sixty-four, inclusive, may employ one or more school physicians and may employ one or more school registered nurses; determine the relative amount of service to be rendered by each in each town; fix the compensation of each person so employed; apportion the payment thereof among the several towns; and certify the respective shares to the several town treasurers. A school physician or registered nurse so employed may be removed by a two thirds vote of the full membership of the joint committee. The joint committee of any superintendency union may employ clerical and secretarial help, special teachers and supervisors, fix the compensation of each person so employed and apportion the payment thereof among the several towns; and certify the respective shares to the respective town treasurers.

Amended by St.1950, c. 208, § 1; St.1974, c. 411, §§ 2, 2A.

§ 53B. Towns within a superintendency district or union; liability for appointing physicians and nurses

The towns comprised in a superintendency district or union employing, to the satisfaction of the department, one or more school physicians and registered nurses in accordance with the provisions of section fifty-three A shall be exempt from the provisions of section fifty-three requiring the appointment of such persons.

Amended by St.1974, c. 411, § 3.

§ 54. Physical examination of school personnel

Every school physician shall make a prompt examination of all children referred to him as provided in this chapter, and such further examination of teachers, janitors and school buildings as in his opinion the protection of the health of the pupils may require. Every such physician who is assigned to perform the duty of examining children who apply for health certificates shall make a prompt examination of every child who wishes to obtain an employment permit, as provided in section eighty-seven of chapter one hundred and forty-nine, and who presents to said physician the pledge or promise of the employer, as provided in said section; and the physician shall certify in writing whether or not in his opinion such child is in sufficiently sound health and physically able to perform the work described in said pledge or promise.

Amended by St.1938, c. 265, § 1; St.1945, c. 133, § 2.

§ 54A. Physician or person trained in emergency medical care; assignment to interscholastic football games

A physician employed by a school committee or a person who has completed a full course in emergency medical care as provided in section six of chapter one hundred and eleven C shall be assigned to every interscholastic football game played by any team representing a public secondary school in the commonwealth, and the expenses of such physician or person shall be paid by the school committee of the city, town or district wherein such football game is played.

Added by St.1972, c. 74. Amended by St.1975, c. 569.

§ 54B. Psychotropic drugs; administering in public schools regulated

No person shall administer or cause to be administered to a pupil in any public school in the commonwealth any psychotropic drug included on a list to be established by the department of public health unless the school has obtained certification by the commissioner of public health or his designee that the administration of such drugs in school is a legitimate medical need of the pupil. Administration of duly approved medication shall be carried out only by a registered nurse or a licensed physician. No person shall administer psychotropic drugs to such a pupil for the purposes of clinical research. The department of public health shall make rules and regulations setting forth a list of subject psychotropic drugs and procedures for certification.

Added by St.1973, c. 817.

§ 55. Contagious diseases; regulations

A child infected, or in a household where a person is infected, with a disease dangerous to the public health as defined in accordance with section six of chapter one hundred and eleven, or in a household exposed to contagion from any such disease in another household, shall not attend any public school while he is so infected or remains in a household where such infection or exposure exists if the regulations of the board of health require such exclusion. A child returning to school after having been absent on account of such infection or exposure shall present a certificate from the board of health or its duly appointed agent that the danger of conveying such disease by such child has passed; provided, that if such a child returns to school without such a certificate, after having been absent on account of such infection or exposure, he shall immediately be referred to a school physician for examination and, if it is found by such physician upon such examination that such danger has passed, he may remain at school.

Amended by St.1938, c. 265, § 2; St.1952, c. 89.

§ 55A. Sick, injured or incapacitated pupils; procedure for handling; emergency first aid or transportation; teachers, et al. exempted from civil liability

A child showing signs of ill health or of being infected with a disease dangerous to the public health as defined in accordance with section six of chapter one hundred and eleven shall be sent home immediately, or as soon as safe and proper conveyance can be found, or shall be referred to a school physician, who may direct that such child be sent home. In the case of schools remotely situated, such other steps may be taken as will best effectuate the purpose of this section and ensure the safety of such child and of other pupils. The superintendent of schools shall immediately cause the board of health to be notified of all children excluded under this section by reason of any disease dangerous to the public health.

No public school teacher, principal, or nurse who, in good faith, renders emergency first aid or transportation to a student who has become injured or incapacitated in a public school building or on the grounds thereof shall be liable in a suit for damages as a result of his acts or omissions either for such first aid or as a result of providing emergency transportation to a place of safety, nor shall he be liable to a hospital for its expenses if under such emergency conditions he causes the admission of such injured or incapacitated student, nor shall he be subject to any disciplinary action by the school committee for such emergency first aid or transportation.

Added by St.1938, c. 265, § 3. Amended by St.1973, c. 660.

§ 55B. Regulation of communicable tuberculosis; periodic examination of school personnel; sick leave with pay for afflictees

No person known to be suffering from tuberculosis in a communicable form, or having evidence of symptoms thereof, shall be employed or continued in employment at any public or private school in the commonwealth, including any college or university, at any special training center for the mentally retarded or any program for youthful offenders in any capacity which might bring him into direct contact with any student at such school. Immediately prior to his entering into any such employment, and at least every three years during the course of his employment thereafter, each school superintendent, principal, director, teacher, food handler, custodian, school bus driver, nurse, doctor, or other person whose duties, either official or voluntary, bring him into such direct contact with students, shall file with the superintendent or other persons having charge of such school on forms furnished by the department of public health and approved by the department of education, a report made by a licensed physician or a registered nurse certifying his freedom from tuberculosis in a communicable form and said report shall be kept a part of the records of such school authorities. The report certifying freedom from tuberculosis shall be accompanied by the results of a negative intradermal tuberculin test administered not more than ninety days prior thereto in a manner approved by the commissioner of public health, or in the case of a person whose tuberculin test is positive, by the report of a large X-ray film of the chest taken not more than ninety days prior thereto, and such other laboratory and clinical examinations as may be required for the exclusion of tuberculosis in a communicable form, except that no registered nurse shall file any such report without the results of a negative tuberculin test. The commissioner of public health may order that such examinations be repeated or additional tests made in a department of public health designated tuberculosis clinic in any case where the results may be in dispute. On request, X-ray films shall be submitted for review to the department of public health or its designated tuberculosis clinic and where the X-ray so submitted is for any reason not satisfactory, an X-ray of the employee's chest shall be made by the department or designated clinic. When such X-ray shows a pulmonary lesion which cannot be properly evaluated on a single film, further X-ray examinations shall be made, at such intervals as it may require, and without charge, by said department or designated tuberculosis clinic. Cases in which the question of communicability of tuberculosis arises may, on appeal, be referred to a board of three competent physicians, appointed by the commissioner of public health, and their decision shall be final. Such reports and X-rays or intradermal tuberculin tests shall be required at least every three years from all employees; provided, that such reexamination shall not be required within three years of any previous examination for any school employee who may transfer employment within the commonwealth.

Any teacher, other than a teacher in the public schools, or any other employee excluded or removed from employment on account of tuberculosis in a communicable form shall be carried on sick leave with pay for such period as he may be entitled to under regulations of the school committee or other school officers; and any teacher in a public school, or other employee therein whose duties bring him into direct contact with any student thereat, shall, if excluded or removed from employment on account of tuberculosis in a communicable form be carried on sick leave with pay for the entire period of such exclusion or removal, but in no case for more than two years, and for such further additional period as he may be entitled to under the regulations of the school committee or other school officers. No teacher or employee so excluded or removed shall return to employment in a school until properly certified by the department of public health, or a designated tuberculosis clinic, on the basis of X-ray and laboratory examinations, as free from tuberculosis in a communicable form. Facilities for free X-ray service shall be provided by the department of public health or a designated tuberculosis clinic for all persons who come within the scope of this section.

Added by St.1950, c. 732, § 1. Amended by St.1952, c. 469; St.1954, c. 658; St.1958, c. 15; St.1964, c. 378; St.1977, c. 67, §§ 1, 2.

§ 55C. Eye protection devices

Each teacher and pupil of any school, public or private, shall, while attending school classes in industrial art or vocational shops or laboratories in which caustic or explosive chemicals, hot liquids or solids, hot molten metals, or explosives are used or in which welding of any type, repair or servicing of vehicles, heat treatment or tempering of metals, or the milling, sawing, stamping or cutting of solid materials, or any similar dangerous process is taught, exposure to which may be a source of danger to the eyes, wear an industrial quality eye protective device, approved by the department of public safety. Each visitor to any such classroom or laboratory shall also be required to wear such protective device.

Added by St.1964, c. 51. Amended by St.1966, c. 21.

§ 56. Sick children; notification to parents

If any child is found to be suffering from any disease or defect, or if any child is found to have any defect or disability requiring treatment, the school committee shall forthwith notify the parent or guardian of such child.

Amended by St.1938, c. 265, § 4.

§ 57. Physical examination of pupils

The committee, or the board of health in those municipalities where school health services are the responsibility of the board of health, shall cause every child in the public schools, and at the individual request of a parent or guardian of a pupil in a private school which has been approved under section one, and which does not discriminate in its entrance requirements on the basis of race or color cause such pupil to be separately and carefully examined in such manner and at such intervals, including original entry, as may be determined by the department of public health after consultation with the department of education and the medical profession, to ascertain defects in sight or hearing, and other physical defects tending to prevent his receiving the full benefit of his school work, or requiring a modification of the same in order to prevent injury to the child or to secure the best education results, and to ascertain defects of the feet which might unfavorably influence the child's health or physical efficiency, or both, during childhood, adolescence and adult years, and shall require a physical record of each child to be kept in such forms as prescribed by the provisions of section one hundred and eighty-five A of chapter one hundred and eleven. Tests of sight and hearing shall be performed by teachers, physicians, optometrists, nurses or other personnel who are approved by the department of public health for this purpose, and the examination of feet shall be made by the school physicians or by podiatrists, in accordance with regulations set up by the department. Any child shall be exempt on religious grounds from these examinations upon written request of parent or guardian on condition that the laws and regulations relating to communicable diseases shall not be violated.

Amended by St.1943, c. 384; St.1951, c. 502, § 1; St.1955, c. 684; St.1956, c. 428; St.1970, c. 443, § 3; St.1973, c. 1197; St.1975, c. 480.

SCHOOLHOUSES

§ 72. Sale of lunches

The school committee may prepare and sell lunches at one or more school buildings for the pupils and teachers of the public schools at such prices as it deems reasonable.

§ 80. Lunch period for teachers

Every teacher employed in any public school whose duties commence prior to twelve o'clock noon, shall be allowed a thirty-minute lunch period between the hours of ten o'clock in the forenoon and one o'clock in the afternoon, and shall not be required to perform any duties during said lunch period; provided, however, that the provisions of this section shall apply only in a city or town which accepts this section by vote of its school committee.

Added by St.1958, c. 127, § 1. Amended by St.1958, c. 368.

CHAPTER 71B

CHILDREN WITH SPECIAL NEEDS

Sec.
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4. Agreements between school committees or with public or private schools.
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6. Assignment of children to classes; annual report; equal educational opportunities, denial, hearings, plans, injunctive or other relief.
7. Tests for selection of children for referral, diagnosis, or evaluation.
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9. Department to define circumstances requiring special education programs and to provide standards.
10. Referral of children to institutions within or without the commonwealth on annual renewal basis upon request; requisites; expenses and cost.
11. Recreation programs; cooperation with cities and towns; reimbursement for cost.
12. School departments; establishment; administration; staff; operation; expenditures; costs of education.
13. Retarded children and adults; reimbursement of transportation costs.
13A. Repealed.
14. Special needs programs; reimbursement of transportation costs.

§ 1. Definitions

The following words as used in this chapter shall, unless the context requires otherwise, have the following meanings: "Department", the department of education; "School age child", any person of ages three through twenty-one who has not attained a high school diploma or its equivalent; "School age child with special needs", a school age child who, because of temporary or more permanent adjustment difficulties or attributes arising from intellectual, sensory, emotional, or physical factors, cerebral dysfunctions, perceptual factors, or other specific learning disabilities or any combination thereof, is unable to progress effectively in a regular school program and requires special classes, instruction periods, or other special education services in order to successfully develop his individual educational potential; "Regular education", the school program and pupil assignment which normally leads to college preparatory or technical education or to a career; "Special education", educational programs and assignments, namely special classes, programs or services designed to develop the educational potential of children with special needs including but not limited to educational placements of children by school committees, the departments of public health, mental health, and youth services and the department of social services in accordance with the regulations of the department of education; "School age child requiring special education", any child with special needs who requires special education as determined in accordance with the regulations set forth by the department.

Added by St.1972, c. 766, § 1. Amended by St.1978, c. 552, § 18.

§ 2. Regulations; special education programs; pre-school level admission to programs; assignment of child

The department shall promulgate, in cooperation with the departments of mental health, public health and social services, regulations regarding programs for children with special needs including but not limited to a definition of special needs; provided, however, that such definition shall emphasize a thorough narrative description of each child's developmental potential so as to minimize the possibility of stigmatization and to assure the maximum possible development of a child with special needs, and, provided further, that such definition shall be sufficiently flexible to include children with multiple special needs. Children receiving or requiring special education shall be entitled to participate in any of the following programs: (1) additional direct or indirect instruction consultation service, materials, equipment or aid provided children or their regular classroom teachers which directly benefits children requiring special education; (2) supplementary individual or small group instruction or treatment in conjunction with a regular classroom program; (3) integrated programs in which children are assigned to special resource classrooms but attend regular classes to the extent that they are able to function therein; (4) full-time special class teaching or treatment in a public school building; (5) teaching or treatment at home; (6) full-time teaching or treatment in a special day school or other day facility; (7) teaching or treatment at a hospital; (8) teaching or treatment at a short or long term residential school; (9) occupational and pre-occupational training in conjunction with the regular occupational training program in a public school; (10) occupational and pre-occupational training in conjunction with full-time special class teaching in a public school building, at home, special day school or other day facility, hospital, or short or long-term residential school; (11) any combination or modification of programs (1) through (10) or other programs, services, treatments or experimental provisions which obtain the prior approval of the department.

Admission to such programs on the pre-school level at an earlier age than at which schooling is ordinarily provided shall be regulated by the department in conjunction with the departments of public health and mental health and shall be restricted to children with substantial disabilities who are judged by said departments to require such programming.

No child shall be assigned to a special education class unless it is first determined by an evaluation of the child's needs and the particular special education program that the child is likely to benefit from such program; periodically thereafter, and in no event less often than annually the child and his program shall be reevaluated to determine whether said child is benefiting from said program in accordance with the procedures set forth in section three. In the event that said program is not benefiting the child and that another program may benefit the child more, or said program has benefited the child sufficiently to permit reassignment, the child shall be reassigned, and in the event of consistent failure of a program to benefit children there assigned, the program shall be abolished or altered.

Added by St.1972, c. 766, § 11. Amended by St.1978, c. 552, § 19.

§ 3. Identification of school age children with special needs; diagnosis of needs; proposal of program; consent; evaluations and assessments of child and program; admission or placement; procedures; restrictions; regulations; records

In accordance with the regulations, guidelines and directives of the department issued jointly with the departments of mental health and public health and with assistance of the department, the school committee of every city, town or school district shall identify the school age children residing therein who have special needs, diagnose and evaluate the needs of such children, propose a special education program to meet those needs, provide or arrange for the provision of such special education program, maintain a record of such identification, diagnosis, proposal and program actually provided and make such reports as the department may require. Until proven otherwise, every child shall be presumed to be appropriately assigned to a regular education program and presumed not to be a school age child with special needs or a school age child requiring special education.

No school committee shall refuse a school age child with special needs admission to or continued attendance in public school without the prior written approval of the department. No child who is so refused shall be denied an alternative form of education approved by the department, as provided for in section ten, through a tutoring program at home, through enrollment in an institution operated by a state agency or through any other program which is approved for the child by the department.

No child shall be placed in a special education program without prior consultation, evaluation, reevaluation, and consent as set forth and implemented by regulations promulgated by the department.

Within five days after the referral of a child enrolled in a regular education program by a school official, parent or guardian, judicial officer, social worker, family physician, or person having custody of the child for purposes of determining whether such child requires special education, the school committee shall notify the parents or guardians of such child in writing in the primary language of the home of such referral, the evaluation procedure to be followed, and the child's right to an independent evaluation at clinics or facilities approved by the department under regulations adopted jointly by the department and the departments of mental health and public health and the right to appeal from any evaluation, first to the department, and then to the courts.

Within thirty days after said notification the school committee shall provide an evaluation as hereinafter defined. Said evaluation shall include an assessment of the child's current educational status by a representative of the local school department, an assessment by a classroom teacher who has dealt with the child in the classroom, a complete medical assessment by a physician, an assessment by a psychologist, an assessment by a nurse, social worker, or a guidance or adjustment counselor of the general home situation and pertinent family history factors; and assessments by such specialists as may be required in accordance with the diagnosis including when necessary, but not limited to an assessment by a neurologist, an audiologist, an ophthalmologist, a specialist competent in speech, language and perceptual factors and a psychiatrist.

The department jointly with the departments of mental health and public health shall issue regulations to specify qualifications for persons assessing said child.

These departments through their joint regulations may define circumstances under which the requirement of any or all of these assessments may be waived so long as an evaluation appropriate to the needs of the child is provided.

Those persons assessing said child shall maintain a complete and specific record of diagnostic procedures attempted and their results, the conclusions reached, the suggested courses of special education and medical treatment best suited to the child's needs, and the specific benefits expected from such action. A suggested special education program may include family guidance or counseling services. When the suggested course of study is other than regular education those persons assessing said child shall present a method of monitoring the benefits of such special education and conditions that would indicate that the child should return to regular classes, and a comparison of expected outcomes in regular class placement.

If a child with special needs requires medical or psychological treatment as part of a special education program provided pursuant to this section, or if his parent or guardian requires social services related to the child's special needs, such treatment or services, or both, shall be made available, in accordance with regulations promulgated jointly by the departments of education, mental health, public health and social services in connection with the child's special education program. Reimbursement of the costs of such treatment or services or both shall be made according to the provisions of section thirteen.

Upon completion of said evaluation the child may obtain an independent evaluation from child evaluation clinics or facilities approved by the department jointly with the departments of mental health and public health or, at private expense, from any specialists.

The written record and clinical history from both the evaluation provided by the school committee and any independent evaluation, shall be made available to the parents, guardians, or persons with custody of the child. Separate instructions, limited to the information required for adequate care of the child, shall be distributed only to those persons directly concerned with the care of the child. Otherwise said records shall be confidential.

The department may hold hearings regarding said evaluation, said hearings to be held in accordance with the provisions of chapter thirty A. The parents, guardians, or persons with custody may refuse the education program suggested by the initial evaluation and request said hearing by the department into the evaluation of the child and the appropriate education program. At the conclusion of said hearing, with the advice and consultation of appropriate advisory councils established under section one P of chapter fifteen, the department may recommend alternative educational placements to the parents, guardians or persons with custody, and said parents, guardians and persons with custody may either consent to or reject such proposals. If rejected, and the program desired by the parents, guardian or person with custody is a regular education program, the department and the local school committee shall provide the child with the educational program chosen by the parents, guardians or persons with custody except where such placement would seriously endanger the health or safety of the child or substantially disrupt the program for other students. In such circumstances the local school committee may proceed to the superior court with jurisdiction over the residence of the child to make such showing. Said court upon such showing shall be authorized to place the child in an appropriate education program.

If the parents, guardians or persons with custody reject the educational placements recommended by the department and desire a program other than a regular education program, the matter shall be referred to the state advisory commission on special education to be heard at its next meeting. The commission shall make a determination within thirty days of said meeting regarding the placement of the child. If the parents, guardians or persons with custody reject this determination, they may proceed to the superior court with jurisdiction over the residence of the child and said court shall be authorized to order the placement of the child in an appropriate education program.

During the course of the evaluations, assessments, or hearings provided for above, a child shall be placed in a regular education program unless such placement endangers the health or safety of the child or substantially disrupts such education program for other children.

No parent or guardian of any child placed in a special education program shall be required to perform duties not required of a parent or guardian of a child in a regular school program.

Within ten months after placement of any child in a special education program, and at least annually thereafter the child's educational progress shall be evaluated as set forth above. If such evaluation suggests that the initial evaluation was in error or that a different program or medical treatment would now benefit the child more, appropriate reassignment or alteration in treatment shall be recommended to the parents, guardians or persons having custody of the child. If the evaluation of the special education program shows that said program does not benefit the child to the maximum extent feasible, then such child shall be reassigned.

Evaluations and assessments of children and special education programs shall remain confidential and be used solely for the administration of special education in the commonwealth, including, but not limited to, inspection by the department and regional and state advisory councils to insure that every special education program does benefit the children there assigned.

Added by St.1972, c. 766, § 11. Amended by St.1978, c. 552, § 20.

§ 4. Agreements between school committees or with public or private schools

The school committee of any city, town or school district may, to meet its obligations under section three, with the approval of the department enter into an agreement with any other school committee to jointly provide special education or, subject to the consent of the parent or guardian affected thereby and subject to constitutional limitations, may enter into an agreement with any public or private school, agency, or institution to provide the necessary special education within the city, town or school district.

In the case of an agreement between school committees to jointly provide special education, said agreement shall designate one city, town or school district as the operating agent. Funds received by such operating agent from other cities, towns or school districts or appropriated by such operating agent for the purposes of such agreement, in addition to gifts and grants shall be deposited with and held as a separate account by its treasurer. The school committee may apply said funds to the costs of programs operated pursuant to the agreement without further appropriation.

Added by St.1972, c. 766, § 11.

§ 5. Costs or obligations; payment; budget

Any school committee which provides or arranges for the provision of special education pursuant to the provisions of section three shall pay for such special education personnel, materials and equipment, tuition, room and board, transportation, rent and consultant services as are necessary for the provision of such special education.

A school committee which incurs costs or obligations under the provisions of this section shall include within its annual budget an amount of money to comply with said provisions. Said amount shall be added to the annual budget appropriation for school purposes in each city or town for the support of public schools for the purposes of, and enforceable pursuant to, section thirty-four of chapter seventy-one, notwithstanding any general or special laws or charter provisions which limit the amount of money that may be appropriated in any city or town for school purposes.

Added by St.1972, c. 766, § 11. Amended by St.1973, c. 318, § 1.

§ 6. Assignment of children to classes; annual report; equal educational opportunities, denial, hearings, plans, injunctive or other relief

School committees shall annually report to the department, pursuant to regulations promulgated by the department, the assignment by sex, national origin, economic status, race and religion, of children by age level to special education classes and the distribution of children residing in the district by sex, national origin, economic status, race and religion of children by age level. Within any school district if in any special education program there is a pattern of assignment throughout the district on the basis of sex, national origin, economic status, race or religion of the students which is substantially disproportionate from the distribution, the department shall notify such school district of its prima facie denial of equal educational opportunities. The department shall hold public hearings to investigate into such prima facie denial, at which hearings the local school district must show that such disproportion is necessary to promote a compelling education interest of the children affected and of the commonwealth. If the local school district fails to make such showing, a denial of equal educational opportunities shall be declared by the department and it shall order said district to submit a plan to eliminate such denial to be effective for the school year immediately following such declaration and order. If in the view of the department the plan submitted is inadequate, or if implementation of said plan proves inadequate, the department may request the attorney general to proceed to the superior court for all necessary injunctive and other relief. If such prima facie denial has continued without elimination for a period of two consecutive years in any school district, any person residing in such school district may bring suit in the superior court of his residence to determine whether there is such adequate justification for the prima facie denial, and in the event there is not, to obtain the necessary and appropriate injunctive or other relief.

Added by St.1972, c. 766, § 11.

§ 7. Tests for selection of children for referral, diagnosis, or evaluation

No results of standardized or local tests of ability, aptitude, attitude, affect, achievement, or aspiration may be used exclusively in the selection of children for referral, diagnosis, or evaluation. Such tests must be approved by the department in accordance with regulations issued by the board to insure that they are as free as possible from cultural and linguistic bias or, wherever necessary, separately evaluated with reference to the linguistic and cultural groups to which the child belongs.

Added by St.1972, c. 766, § 11.

§ 8. Transportation to and from school

If a school age child with special needs attends a school approved by the department within or without the city or town of residence of the parent or guardian, the school committee of the town where the child resides may be required by the department to provide transportation once each day including weekends where applicable to and from such school while the child is in attendance. The city or town providing transportation under this section shall be reimbursed according to the provisions of section fourteen.

Added by St.1972, c. 766, § 11. Amended by St.1978, c. 367, § 70H.

§ 9. Department to define circumstances requiring special education programs and to provide standards

The department, after consultation with the departments of mental health and public health, shall define the circumstances in which school committees may be required to provide special classes, instruction periods or other special education programs for school age children with special needs and shall provide standards for class size, curriculum, personnel and other aspects of special education for such children.

Added by St.1972, c. 766, § 11.

§ 10. Referral of children to institutions within or without the commonwealth on annual renewal basis upon request; requisites; expenses and cost

The department may, on an annual renewal basis, upon the request of the parents or guardians and the recommendations of a local school committee and a regional branch of the division of special education, and with the approval of the secretary of educational affairs refer children requiring special education to any institution within or without the commonwealth which offers curriculum, instruction and facilities which are appropriate to the child's needs and which are approved by the department under regulations prescribed by the departments of education, mental health and public health. The curriculum at such an institution must for approval be equivalent, insofar as the department deems feasible, to the curriculum for children of comparable age and ability in the public schools of the commonwealth.

Before acting on said request the department shall determine the nature and extent of a child's special needs, shall require the local school committee and regional advisory council to prepare and submit plans detailing the time needed to establish facilities adequate for children with special needs in the city, town or school district where the child resides, and shall ascertain whether adequate facilities and instruction programs are available or when adequate facilities can be made available in the city, town or school district where the child with special needs resides. Until adequate facilities can be made available, such child shall be placed in the most adequate program available as determined by the department. The department shall further define by regulation the circumstances in which it shall be directly responsible for the placement of children in such special education programs, and by standards available to the public determine the methods and order of such placements; provided, however, that no child shall be denied access to any program operated by the department of mental health, public health or social services to which in the judgment of the operating department the child should be admitted.

The expenses of the instruction and support actually rendered or furnished to such children with special needs, including their necessary travelling expenses, whether daily or otherwise, but not exceeding ordinary and reasonable compensation therefor, may be paid by the commonwealth; but the department shall issue regulations jointly with the departments of mental health, public health, youth services and social services defining the circumstances in which the commonwealth shall bear all or part of such cost, the circumstances in which school committees shall be required to bear part or all of such cost, and the circumstances in which a parent or guardian may be required to reimburse the commonwealth for part or all of such cost; provided, however, that in no event shall the cost to the school committee for placement under this section be less than the average per pupil cost for pupils of comparable age within the city, town or school district; and, provided further, that in determining the cost to the parent or guardian, if any, no charge shall be made for any educational cost but only for support and care. In determining the cost to the parent or guardian the department shall apply criteria which take into account relative ability to pay.

The department shall direct and supervise the education of all such children, and the commissioner of education shall state in his annual report their number, the cost of their instruction and support, the manner in which the money appropriated therefor has been expended, to what extent reimbursed and such other information as he deems important.

Nothing contained herein shall affect the continued authority of the departments of mental health and public health over all non-educational programs and all treatment for residents or patients in institutions under their control.

Added by St.1972, c. 766, § 11. Amended by St.1978, c. 552, § 21.

§ 11. Recreation programs; cooperation with cities and towns; reimbursement for cost

The department is hereby authorized to cooperate with cities and towns which establish recreation programs for school age children with special needs.

Such programs shall be under the direction and approval of the division of special education, and the department shall reimburse said cities and towns for one half of the cost thereof, including transportation of said children to and from the site of such program on each day said program is held. The department shall also fully reimburse a city or town in which said children are residents for the cost of transportation to and from recreation programs at any state facility whose recreation programs are approved by the department for the purposes of this section.

Added by St.1972, c. 766, § 11.

§ 12. School departments; establishment; administration; staff; operation; expenditures; costs of education

The department shall establish and maintain a school department for school-age children in each institution under the control of the departments of mental health, public health and youth services which provides support and care for resident children with special needs, acting jointly with the department which has control over the particular institution; provided, however, that appropriations for the administration of said school departments shall be administered by the department of education.

Each such school department shall be administered by a director, appointed jointly by the commissioner of education and the superintendent of said institution.

Each such school department shall have such staff as the department and the department which administers the institution involved deem appropriate.

Such school departments shall operate pursuant to regulations established jointly by the department and the department which administers said institution. Nothing contained herein shall affect the continued authority of departments operating such institutions over all non-educational programs and all treatment for residents or patients in institutions under their control.

The director and staff of such school departments shall be employees of the department of education, which shall assume the costs of all aspects of the educational programs in such departments. Said school departments may operate twelve months of the year. The salaries of school department personnel shall be paid at a rate at least equivalent to that of the average statewide public school salaries for comparable personnel employed in the public schools, as adjusted to account for the longer school year in the school departments. The total employee benefits accruing to such personnel in vacation, sick leave, tenure, and retirement benefits shall be similarly comparable to those of public school personnel, as adjusted to account for the longer school year in the school departments. Nothing contained herein shall operate to remove from employment any educational personnel already employed by any institution now under the administration of the department of mental health, public health or youth services, or to reduce their salaries or other employee benefits.

The per capita expenditure on education programs in such school department shall be equivalent to or higher than the average expenditure for special education programs in the public schools of the commonwealth less the average transportation costs. Said average expenditure shall be computed annually by the department of education.

The city, town or regional school district in which each school-age child in any institution described hereinabove would normally be eligible to attend school shall pay to the commonwealth the costs of the education of said child in the school department of said institution in an amount determined according to the regulations issued under section ten; provided, however, that said payment for each such child shall not be less than its average per pupil cost for pupils of comparable age within the said city, town or school district. The amount due the commonwealth each year shall be deducted from the annual distribution to said city, town or school district pursuant to section eighteen A of chapter fifty-eight.

Added by St.1972, c. 766, § 11.

§ 13. Retarded children and adults; reimbursement of transportation costs

The department shall reimburse a city or town in which a child resides who attends a clinical nursery school established under section twenty-seven of chapter nineteen or a child, who, because of insufficient classroom space in a clinical nursery school, attends a clinical nursery school, day care center or other institution for the care, education or treatment of retarded children conducted by an accredited school or college within the commonwealth, as provided in said section twenty-seven, or a retarded person who attends an educational, habilitational or day care program or facility of the department of mental health, as provided under section twenty-eight of said chapter nineteen, by paying one half of the cost of the transportation of each such child and the full cost of each such adult to and from such educational, habilitational or day care program or facility, as the case may be, on each day said school is in session.

Added by St.1972, c. 766, § 11. Amended by St.1975, c. 375, § 1; St.1977, c. 383, § 1; St.1978, c. 367, § 70*I*.

§ 13A. Repealed by St.1978, c. 367, § 70J

§ 14. Special needs programs; reimbursement of transportation costs

The state treasurer shall annually, on or before November twentieth, reimburse any city, town, regional school district or independent vocational school for expenditures incurred during the previous fiscal year in the transportation of pupils enrolled in special needs programs, in the manner hereinafter defined, provided that such transportation services are required by the educational plan of each such pupil, and that such services are not normally provided to pupils enrolled in regular day program in said city, town, regional school district or independent vocational school. Such reimbursement shall include: first, an amount for each such special needs pupil which is equal to the average transportation services expenditure per pupil enrolled in regular day program in said city, town, regional school district or independent vocational school during said fiscal year; and second, the entire amount by which each of the average transportation services expenditures per pupil enrolled in each special needs program prototype, as defined in regulations promulgated under this chapter, in said city, town, regional school district or independent vocational school during said fiscal year may exceed the aforesaid average transportation services expenditure per pupil enrolled in regular day program. In no instance, however, shall the amount of reimbursement for such excess cost within such special needs program prototype exceed one hundred and ten per cent of the averages of such excess costs in all cities, towns, regional school districts and independent vocational schools during the fiscal year in which such expenditures were made.

In determining each said average transportation services expenditure per pupil enrolled in regular day program in each city, town, regional school district and independent vocational school, the department of education shall use the transportation services expenditure per pupil eligible for reimbursement under sections seven A, seven B or sixteen C of chapter seventy-one, whichever is higher, during the same fiscal year. The commissioner of education may, by regulation, under the direction of the state board of education, further define the expenditures per pupil to be used in aforesaid computations.

Added by St.1972, c. 766, § 11. Amended by St.1978, c. 367, § 70K.

CHAPTER 74

VOCATIONAL EDUCATION

TRAINING AND INSTRUCTION OF DISABLED SOLDIERS AND SAILORS

Sec.
41. Lease of state facilities.

TRAINING AND INSTRUCTION OF DISABLED SOLDIERS AND SAILORS

§ 41. Lease of state facilities

The governor, with the advice and consent of the council, may lease to, or permit to be used by, the United States or any department, bureau or agency thereof, any state hospital, school or workshop, and its premises and equipment, or any other suitable resources belonging to the commonwealth, to enable the United States to re-educate and rehabilitate in industry any soldiers and sailors in the service of the United States or its allies.

CHAPTER 75

UNIVERSITY OF MASSACHUSETTS

MASSACHUSETTS AGRICULTURAL EXPERIMENT STATION

Sec.
16. Establishment.
16A. Diagnostic laboratory.
17. Experiments and investigations; nature and scope.
19. Reports on results of experiments; distribution.

MEDICAL SCHOOL

34. Maintenance and operation; grants.
35. Dean and other officers and members of professional staff.
36. Annual budget.
36A. Cremation and disposal of donated bodies.

MASSACHUSETTS AGRICULTURAL EXPERIMENT STATION

§ 16. Establishment

The trustees shall maintain at the university an agricultural experiment station, to be known as the Massachusetts agricultural experiment station, and shall use therefor the land, buildings and equipment heretofore acquired therefor and owned by the commonwealth. Such station shall be a part of the university.

Amended by St.1947, c. 344, § 20.

§ 16A. Diagnostic laboratory

The trustees shall establish and maintain at said station a diagnostic laboratory for the purpose of the provisions of clause First of section seventeen relative to domestic animals. Experiments may be conducted at said station in co-operation with Massachusetts dairy farmers to control and eliminate the disease of mastitis. For the purpose of the collection and laboratory examination of milk samples to eliminate mastitis, in the conduct of such work, a fee not exceeding twenty-five cents for each sample tested may be charged. The director shall accept samples of milk for test collected by the department of agriculture and may accept samples from such other qualified persons as he may approve for the collection of such samples.

Added by St.1945, c. 586. Amended by St.1947, c. 344, § 21; St.1947, c. 471.

§ 17. Experiments and investigations; nature and scope

The trustees shall cause experiments and investigations to be made at said station in the following subjects:

First, The causes, prevention and remedies of diseases of domestic animals, plants and trees;

Second, The history and habits of insects destructive to vegetation, and the means of abating them;

Third, The manufacture and composition of both foreign and domestic fertilizers, their values and adaptability to different crops and soils;

Fourth, The values, under all conditions, of forage, grain and root crops, as food for farm animals, for various purposes;

Fifth, The comparative value of green and dry forage, and the cost of producing and preserving them in the best condition;

Sixth, The adulteration of any article of food intended for the use of men or animals;

Seventh, Testing poultry to eliminate disease;

Eighth, Other subjects deemed advantageous to agriculture and horticulture in the commonwealth.

§ 19. Reports on results of experiments; distribution

The trustees shall publish bulletins containing the results of experiments and investigations by the station, except under the following section, and shall distribute such bulletins to residents and newspapers of the commonwealth applying therefor.

MEDICAL SCHOOL

§ 34. Maintenance and operation; grants

The trustees shall maintain a medical school to be known as the University of Massachusetts medical school. Said school shall be so maintained and operated as to comply with the standards approved by nationally recognized medical associations for accredited schools of medicine.

The trustees are authorized and directed to make plans and to work with all state and federal agencies and to accept grants or matching funds that are available or may become available from the federal government or any other source, public or private, for constructing, financing, equipping, improving or expanding said medical school.

Added by St.1962, c. 787, § 3.

§ 35. Dean and other officers and members of professional staff

The trustees shall elect the dean and such other officers and members of the professional staff of the medical school as they deem necessary and shall fix their classification, title and salary within the general salary schedule, except that any such salary shall be fixed at any amount not less than the minimum salary nor more than the maximum salary shown in the said schedule; provided, however, that the trustees may establish the salary for the dean and for the heads of department without reference to the general salary schedule and salary range. The trustees shall define the duties and tenure of office of all officers and members of the professional staff. The dean, under the president of the university, shall have the administrative responsibility of carrying out the policies established by the trustees for the conduct of said school and shall administer and coordinate its affairs.

Added by St.1962, c. 787, § 3. Amended by St.1963, c. 727; St.1966, c. 659, § 3.

§ 36. Annual budget

In order to provide for the maximum allowable degree of fiscal independence, the budget to be submitted with the estimates required under sections three and four of chapter twenty-nine, and the annual forecasts under section five A of said chapter twenty-nine in so far as they pertain to the medical school shall be submitted by the trustees separate from the estimates and forecasts submitted by the trustees for other parts of the university.

Added by St. 1962, c. 787, § 3.

§ 36A. Cremation and disposal of donated bodies

The University of Massachusetts medical school in Worcester may cremate the bodies of deceased persons which have been donated to said medical school and which have been used for the promotion of anatomical science, including the teaching thereof, or for any other purpose not inconsistent with chapter one hundred and thirteen, and may dispose of the ashes of such bodies by burial or other appropriate means; provided, that the remains of any bodies received pursuant to section eight of chapter one hundred and thirteen shall be subject to the terms of the donor's gift, if any.

Added by St.1977, c. 171, § 1.

CHAPTER 76

SCHOOL ATTENDANCE

Sec.
2A. Attendance of deaf children; penalty.
11. Tuition of children in institutions.
15. Vaccination and immunization.
15A. Sickle cell anemia; blood tests.
15B. Screening programs, testing, treatment, etc. for sickle cell anemia and related genetically-linked diseases; rules and regulations; records and information, disclosure restricted.

§ 2A. Attendance of deaf children; penalty

Every person in control of a deaf child between seven and eighteen shall cause such child to attend some suitable school, approved by the department, where the deaf are taught speech and speech reading; provided, that this section shall not apply to such a child whose mental condition or whose physical condition in other respects than deafness is such as to render such attendance inexpedient or impractical or who is being given private instruction, approved by the department, during the time the public schools are in session. Failure for one month during any school year by any person in control of such a child to cause his attendance as aforesaid shall, on complaint by a supervisor of attendance, be punished by a fine of not more than twenty dollars.

§ 11. Tuition of children in institutions

For tuition in the public schools in any town of less than ten thousand inhabitants of any child between the ages of five and fifteen not theretofore resident in such town, who is an inmate of an institution containing more than six inmates, the town may recover from the institution the school expense incurred by reason of the school attendance of such child, to be determined jointly by its school committee and the trustees or managers of the institution, or, in case of their disagreement, by the probate court; but no demand shall be made upon said trustees or managers without a vote of the town.

§ 15. Vaccination and immunization

No child shall, except as hereinafter provided, be admitted to school except upon presentation of a physician's certificate that the child has been successfully immunized against diphtheria, pertussis, tetanus, measles and poliomyelitis and such other communicable diseases as may be specified from time to time by the department of public health.

A child shall be admitted to school upon certification by a physician that he has personally examined such child and that in his opinion the physical condition of the child is such that his health would be endangered by such vaccination or by any of such immunizations. Such certification shall be submitted at the beginning of each school year to the physician in charge of the school health program. If the physician in charge of the school health program does not agree with the opinion of the child's physician, the matter shall be referred to the department of public health, whose decision will be final.

In the absence of an emergency or epidemic of disease declared by the department of public health, no child whose parent or guardian states in writing that vaccination or immunization conflicts with his sincere religious beliefs shall be required to present said physician's certificate in order to be admitted to school.

Amended by St.1938, c. 265, § 5; St.1967, c. 590, § 15; St.1971, c. 285; St.1972, c. 161.

§ 15A. Sickle cell anemia; blood tests

Every child, which the commissioner of public health, by rule or regulation, may determine is susceptible to the disease known as sickle cell trait or sickle cell anemia, shall be required to have a blood test to determine whether or not he has such disease before being admitted to a public school, or in the first year of attendance in a public school. Such rule or regulation shall include provisions for the preparation and distribution of educational materials relating to sickle cell trait and sickle cell anemia.

Added by St.1971, c. 491.

§ 15B. Screening programs, testing, treatment, etc. for sickle cell anemia and related genetically-linked diseases; rules and regulations; records and information, disclosure restricted

The department of public health shall furnish necessary laboratory and testing facilities for a voluntary screening program for sickle cell anemia or for the sickle cell trait and for such genetically-linked diseases as may from time to time be determined by the commissioner of public health, such as Tay-sacks disease, Cooley's anemia and hemophilia, which shall be established by each city and town. The commissioner shall promulgate rules and regulations for the testing, treatment, care and counseling of all susceptible persons. The most appropriate age for screening and the method of screening shall be determined and redetermined by the commissioner in accordance with said regulations in the light of technical and laboratory changes. Any screening programs which may be established shall include provisions for a complete health education and post-screening counseling service and for such treatment of those affected by any blood abnormality as the commissioner by regulation may determine to be appropriate or practical. Records maintained as part of any screening program shall be confidential and shall not be accessible to anyone other than the commissioner of public health or his agents or to the local health department which is conducting the screening program except by permission of the parents or guardian of any child or adolescent who has been screened. Information on the results of any particular screening program shall be limited to notification to the parents or guardian of the result if the person screened is under the age of eighteen or to said person himself if he is over the age of eighteen. The results may be used otherwise only for collective statistical purposes.

Added by St.1973, c. 946.

TITLE XIII

EMINENT DOMAIN AND BETTERMENTS

CHAPTER 79A

RELOCATION ASSISTANCE

Sec.
13. Enforcement of state sanitary code; displacement of persons; moving expenses; state financial assistance; reports.

§ 13. Enforcement of state sanitary code; displacement of persons; moving expenses; state financial assistance; reports

Any public agency displacing one or more persons by issuing an order to vacate real property for the purpose of enforcing Article II of the state sanitary code, pursuant to section one hundred and twenty-seven B of chapter one hundred and eleven, shall provide relocation assistance and a relocation payment to such person or persons for actual reasonable documented expenses in moving his personal property from the real property, unless such payment is otherwise provided. The provisions of this section shall apply only to real property which is not part of or constitutes the entirety of a project where relocation payments would otherwise be required.

In instances where such enforcement results in the eviction of occupants, the state shall reimburse the locality carrying out such enforcement for fifty per cent of the costs of providing such relocation assistance and moving payments. Such state financial assistance shall be contingent upon the provision of relocation services and payments as documented by periodic reports as required by regulation pursuant to section twelve.

Added by St.1973, c. 863, § 10.

TITLE XIV

PUBLIC WAYS AND WORKS

CHAPTER 83

SEWERS, DRAINS AND SIDEWALKS

CONSTRUCTION AND MAINTENANCE OF SEWERS AND DRAINS

Sec.

1. Authorization; connecting sewers; approval of plans; acquisition of lands by eminent domain or purchase; agreements with other municipalities or districts.
2. Plans and records.
3. Sewer connections.
3A. Private ways; repair of sewers.
4. Highway drains.

SEPARATION, PURIFICATION AND DISPOSAL OF SEWAGE

5. Separate systems for drainage of water and sewage.
6. Sewage disposal works.
7. Sewage disposal works; prevention of nuisances.

REGULATIONS AND PENALTIES

8. Digging up public ways.
9. Obstruction of ditches.
10. Rules and regulations regarding use and connections.
11. Sewer connections; requirements.
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SEWER ASSESSMENTS

14. Authorization.
15. Sewerage systems; adoption; assessment; uniform units; separation of costs.
15A. Redetermination of assessment.
16. Charge for use of sewers.
16A. Certificate of acceptance; effect; recordation.
16B. Effective date of sewer charge lien; termination; methods of collection and enforcement of rate or charge.
16C. Certification of rate or charge to assessors; commitment as tax.
16D. Application of other law; powers of tax collectors.
16E. Remedies of aggrieved real estate owners.

Sec.
16F. Recovery of real estate owner against tenants.
17. Payment for permanent sewer privileges.
18. Method of assessment.
19. Assessments; extension of time for payment.
20. Fee for use of sewers.
21. Assessment on land abutting on more than one way.
22. Assessment of sewers built by landowners.
23. Cost of sewers; payment of portion by municipality.
24. Assessment for particular sewers.

SIDEWALKS

25. Establishment.
26. Assessments.

GENERAL PROVISIONS RELATING TO ASSESSMENTS

27. Recording of statements; assessment liens.
28. Application of betterment law.
29. Betterment assessments created by special act; duration of lien.

CONSTRUCTION AND MAINTENANCE OF SEWERS AND DRAINS

§ 1. Authorization; connecting sewers; approval of plans; acquisition of lands by eminent domain or purchase; agreements with other municipalities or districts

A city or town may lay out, construct, maintain and operate a system or systems of common sewers and main drains in public or private ways for a part or the whole of its territory as they adjudge necessary for the public convenience or the public health with such connections and other works as may be required for a system or systems of sewerage and drainage, and sewage treatment and disposal. Such works for sewage treatment and disposal may include any wastewater treatment facility for treating, neutralizing or stabilizing sewage including treatment or disposal plants; the necessary intercepting, outfall and outlet sewers; pumping stations integral to such facilities; and equipment and appurtenances related to the foregoing. For the purposes of this chapter the word "sewage" shall mean wastewater from homes, public buildings, commercial or industrial establishments, or any combination thereof, and shall include any surface or ground water that may be present therein.

A city or town may install and maintain, in any way therein where sanitary sewers are constructed, such connecting sewers within the limits of such way as may be necessary to connect any estate which abuts upon the way.

No act shall be done except in the making of surveys, reports and other preliminary investigations, until the plan for said system or systems of sewerage and sewage treatment and disposal has been approved by the department of public health.

The aldermen of a city or selectmen, sewer commissioners, or road commissioners, acting for and on behalf of a city or town, may take by eminent domain under chapter seventy-nine, or acquire by purchase or otherwise, any lands, rights of way or easements, public or private, in said city or town, necessary for accomplishing any purpose mentioned in this section, and may construct such sewers or drains under or over any bridge, railroad, railway, or public way, or within the location of any railroad, and may enter upon and dig up any private land, public way or railroad location, for the purpose of laying such sewers or drains and of maintaining and repairing the same, and may do any other thing proper or necessary for the purpose of this section; provided that they shall not take in fee any land of a railroad corporation, and that they shall not enter upon or construct any sewer or drain within the location of any railroad corporation except at such time and in such manner as they may agree upon with such corporation, or, in case of failure to agree, as may be approved by the department of public utilities. Any person injured in his property by such action may recover damages from such city or town under chapter seventy-nine.

Any city, town or district may enter into agreements and contracts with the metropolitan district commission for the purpose of making connections and for the collection, treatment and disposal of sewage. No connection shall be made until the plans have been approved by the department of public health, and in instances within the metropolitan sewerage district until the contract and plans are approved by the metropolitan district commission. The word "district", as used in this paragraph, shall be construed, so far as apt, as it is defined in section one A of chapter forty.

Until the board of sewer commissioners has first been elected or the selectmen have first been authorized by vote to act as such board, as the case may be, the town may carry on such work by a duly authorized committee of the town. Said committee shall serve without compensation and shall have all the powers and authority usually conferred upon a board of sewer commissioners by law.

Amended by St.1964, c. 736, § 2; St.1969, c. 597, § 2; St.1969, c. 758, § 7.

§ 2. Plans and records

Plans and descriptions of all main drains and common sewers belonging to a town, with a true record of the charges of making and repairing said drains and sewers and of all assessments therefor, shall be kept in the office of the town clerk or in such other office of the town as the town by ordinance or by-law may determine.

§ 3. Sewer connections

The board or officers of a city or town having charge of the repair and maintenance of sewers may, upon request of the owner of land and payment by him of the actual cost thereof, construct a particular sewer from the street line to a house or building. A town may appropriate money for connecting estates within its limits with common sewers, and no estate shall, in any year in which such an appropriation is made, be connected with a common sewer except in the manner hereinafter provided. If bonds or notes are issued to pay the cost of making such connections, the assessments provided for in section twenty-four shall be applied to the payment of such bonds or notes. If the board of health of a town making such appropriation shall order land abutting upon a public or private way in which a common sewer has been laid to be connected with such sewer, or if the owner of such land shall make to the board or officer having charge of the maintenance and repair of sewers application to connect his land with a common sewer, such board or officer shall make such connection.

§ 3A. Private ways; repair of sewers

The board or officers of a city or town having charge of the repair and maintenance of sewers may at the request of the owner of land and payment by him of the actual cost thereof repair a break in a sewer laid in a private way and remove any sewerage flowing from such break.

Added by St.1968, c. 248.

§ 4. Highway drains

The department of public works, county commissioners, and the officers having charge of highways in any city or town may construct ditches or drains for the purpose of properly draining any highway, and may carry water away from any highway and over or through any land as they may deem necessary for public convenience or for the proper care or construction of such highway, and may purchase or take by eminent domain under chapter seventy-nine, on behalf of the commonwealth, county, city or town, such land or interest therein as may be necessary therefor. Such ditches and drains shall be under the control of said officials, who may enter upon any land for the purpose of constructing, repairing or maintaining the same; but they shall not enter upon or construct any ditches, drains or other works or lay any conduits or pipes or discharge any water within the location of any railroad corporation, except at such time and in such manner as they may agree upon with such corporation, or, in case of failure so to agree, as may be approved by the department of public utilities. The owner or occupant of land through which any ditch or drain has been constructed under this section may, after securing a permit from the officers having control of the ditch or drain, construct and maintain a bridge over the same. The damages sustained by any person in his property by takings or other acts herein authorized may be recovered under chapter seventy-nine. The department, board or officers who have taken an easement under this section may discontinue or abandon the same by filing for record in the registry of deeds a suitable instrument.

SEPARATION, PURIFICATION AND DISPOSAL OF SEWAGE

§ 5. Separate systems for drainage of water and sewage

In this section surface or storm water and such other waters as shall be specified by the department of public health shall be designated as waters and all other waters and sewage shall be designated as sewage. When a town has provided both a drain for waters and a sewer for sewage in a public way, the owner of every parcel of land abutting on such way or connected with such drain or sewer shall arrange his plumbing so that the waters shall be kept separate from the sewage; and shall make such connections with the drain and sewer respectively that the waters shall pass into the drain and the sewage into the sewer in accordance with the directions of the board or officer having charge of the repair and maintenance of sewers in such town.

§ 6. Sewage disposal works

A town, with the approval of the department of environmental quality engineering after a public hearing by said department of all parties interested, of which notice shall be given by publication in one or more newspapers, may purchase land within its limits, or take the same by eminent domain under chapter seventy-nine, for the treatment, purification and disposal of sewage. Towns or persons owning or operating filter beds or other works for the treatment, purification and disposal of sewage shall provide and maintain works adequate for the treatment of the sewage at all times, and shall operate such works in such manner as will prevent a nuisance therefrom or the discharge or escape of unpurified or imperfectly purified sewage or effluent into any stream, pond or other water, or other objectionable result.

Amended by St.1975, c. 706, § 116.

§ 7. Sewage disposal works; prevention of nuisances

If the department of environmental quality engineering determines upon examination that a filter bed or other works for the treatment, purification and disposal of sewage causes the pollution of a stream, pond or other water, or is likely to become a source of nuisance or create objectionable results in its neighborhood by reason of defective construction, inadequate capacity or negligence or inefficiency in maintenance or operation or from other cause, it may issue notice in writing to the town or person owning or operating such works requiring such enlargement or improvement in the works or change in the method of operation thereof as may be necessary for the proper maintenance and operation of the works and the efficient purification and disposal of the sewage. If said department determines after investigation that the unsatisfactory operation of a sewage disposal system is due wholly or partly to the discharge into the system of manufacturing waste or other substance of such character as to interfere with the efficient operation of said works, it may if necessary prohibit the entrance of such waste or other material, or may regulate the entrance thereof into the system, or may require the treatment of such waste or other material in such manner as may be necessary to prevent its interference with the operation of the works.

Amended by St.1975, c. 706, § 117.

REGULATIONS AND PENALTIES

§ 8. Digging up public ways

No person shall dig up or make an excavation in a public way for the laying, altering or repairing of a drain or sewer without obtaining a written permit from the board or officer having charge of the maintenance and repair of sewers in the town in which such way is situated. Notwithstanding any contrary provision of any local ordinance or bylaw, no such permit shall, except in case of an emergency, be approved or issued by said board or officer until copies of the notices to public utility companies required by section forty of chapter eighty-two have been filed with said board or officer by the applicant for such permit. Whoever violates any provision of this section shall be punished by a fine of not more than fifty dollars for the first offense and not less than fifty dollars nor more than one hundred dollars for any subsequent offense.

Amended by St.1963, c. 370, § 3.

§ 9. Obstruction of ditches

Whoever, by himself, his agents or servants, deposits in or along any ditch or drain constructed under section four any material which will obstruct the flow of water therein shall be punished by a fine of ten dollars, and shall be liable in tort to the commonwealth, the county, city or town controlling the ditch or drain for all damages caused thereby, for the cost and expense of removing the obstructing material and of restoring the ditch or drain to its former condition.

§ 10. Rules and regulations regarding use and connections

A city, town or sewer district may, from time to time, prescribe rules and regulations regarding the use of common sewers to prevent the entrance or discharge therein of any substance which may tend to interfere with the flow of sewage or the proper operation of the sewerage system and the treatment and disposal works, for the connection of estates and buildings with sewers, for the construction, alteration, and use of all connections entering into such sewers, and for the inspection of all materials used therein; and may prescribe penalties, not exceeding twenty dollars, for each violation of any such rule or regulation. Such rules and regulations shall be published at least once a week for three successive weeks in a newspaper published in the city or town if there be any, and if not, then in a newspaper published in the county, and shall not take effect until such publications have been made.

Amended by St.1964, c. 736, § 3.

§ 11. Sewer connections; requirements

The board of health of a town may require the owner or occupant of any building upon land abutting on a public or private way, in which there is a common sewer, to connect the same therewith by a sufficient drain, and such owner or occupant who fails to comply with such order shall be punished by a fine of not more than two hundred dollars.

§ 12. Repair of private drains

If a city council or a town accepts this section or has accepted corresponding provisions of earlier laws, the board of health may require the owner or occupant of an estate which drains into a private drain in a public or private way to put such drain in good repair and condition. If he fails to comply with said order within ten days after notice thereof, he shall be punished by a fine of not more than twenty dollars for every day during which such failure continues.

§ 13. Equity jurisdiction of courts

The supreme judicial court and the superior court shall have jurisdiction in equity to restrain the unlawful use of common sewers or the placing or depositing of materials therein or the violation of regulations regarding the use thereof made under section ten, and to enforce the provisions of sections five to seven, inclusive.

SEWER ASSESSMENTS

§ 14. Authorization

A person who enters his particular drain into a main drain or common sewer, or who by more remote means receives benefit thereby for draining his land or buildings, shall pay to the town a proportional part of the charge of making and repairing the same, and of the charge, not already assessed, of making and repairing other main drains and common sewers through which the same discharges, which shall be ascertained, assessed and certified by the aldermen, sewer commissioners, selectmen or road commissioners.

§ 15. Sewerage systems; adoption; assessment; uniform units; separation of costs

The city council of a city or a town may adopt a system of sewerage for a part or the whole of its territory, and may provide that assessments under section fourteen shall be made upon owners of land within such territory by a fixed uniform rate or a rate based upon a uniform unit method.

A fixed uniform rate shall be based upon the estimated average cost of all the sewers therein, according to the frontage of such land on any way in which a sewer is constructed, or according to the area of such land within a fixed depth from such way, or according to the area of such land within a fixed depth from such way, or according to both such frontage and area; but no assessment in respect to any such land, which by reason of its grade or level or any other cause cannot be drained into such sewer, shall be made until such incapacity is removed. If the assessment is according to the area within such fixed depth, the lien therefor shall attach to the parcel assessed.

A uniform unit method shall be based upon sewerage construction costs divided among the total number of existing and potential sewer units to be served, after having proportioned the cost of special and general benefit facilities. Each sewer unit shall be equal to a single family residence. Potential sewer units shall be calculated on the basis of zoning then in effect. Existing and potential multifamily, commercial, industrial and semipublic uses shall be converted into sewer units on the basis of residential equivalents.

A city by ordinance or a town by by-law may separate the costs of general benefit facilities, including but not limited to pumping stations, trunk and force mains, from that of special benefit facilities, including but not limited to the sewer mains, serving adjacent properties. A portion of costs of the general benefit facilities may be apportioned by the uniform unit method on all areas to receive benefits within the pumping district or combination of districts. The cost of the general benefit facilities, attributable to undeveloped land not abutting a sewered street, may not be assessed until properties are serviced by public sewerage. The proportional cost of the special benefit and general benefit facilities may be assessed against all properties abutting a sewered street.

Amended by St.1978, c. 214.

§ 15A. Redetermination of assessment

Any city at any meeting of the proper municipal authority, or any town at a town meeting, may, from time to time, redetermine the uniform rate fixed under section fifteen, or under any special law, and charged to the abutters for the construction of sewers.

Added by St.1948, c. 52, § 1.

§ 16. Charge for use of sewers

The aldermen of any city or the sewer commissioners, selectmen or road commissioners of a town, may from time to time establish just and equitable annual charges for the use of common sewers, which shall be paid by every person who enters his particular sewer therein. The money so received may be applied to the payment of the cost of maintenance and repairs of such sewers or of any debt contracted for sewer purposes.

Amended by St.1961, c. 311.

§ 16A. Certificate of acceptance; effect; recordation

If the rates and charges due to a city, town or sewer district, which accepts this section and sections sixteen B to sixteen F, inclusive, by vote of its city council or of the voters in towns or districts and, by its clerk, files a certificate of such acceptance in the proper registry of deeds, for supplying or providing for a sewer system or rendering service or furnishing materials in connection therewith to or for any real estate at the request of the owner or tenant are not paid on or before their due date as established by local regulations, ordinances or by-laws, which due dates shall be so established as to require payments at least as often as annually, such rates and charges, together with interest thereon and costs relative thereto, shall be a lien upon such real estate as provided in section sixteen B. The register of deeds shall record such certificate of acceptance in a book to be kept for the purpose, which shall be kept in an accessible location in the registry. Sections sixteen B to sixteen F, inclusive, shall also apply to a sewer district which has accepted sections sixteen A to sixteen F, inclusive, and whose clerk has so filed the certificate of acceptance. Wherever in said sections the words "board or officer in charge of the sewer department" or their equivalent appear, they shall also mean and include the officers exercising similar duties in any city, town or district. A fire or water district authorized to provide a sewer system shall, for the purposes of sections sixteen A to sixteen F, inclusive, be deemed to be a sewer district.

Added by St.1977, c. 586.

§ 16B. Effective date of sewer charge lien; termination; methods of collection and enforcement of rate or charge

Such lien shall take effect by operation of law on the day immediately following the due date of such rate or charge and, unless dissolved by payment or abatement, shall continue until such rate or charge has been added to or committed as a tax under section sixteen C, and thereafter, unless so dissolved, shall continue as provided in section thirty-seven of chapter sixty, except that the date provided for termination of the lien in case of a recorded alienation shall be at the expiration of two years from October first of the year of such addition or committal. Anything in this section to the contrary notwithstanding, if any such rate or charge is not added to or committed as a tax under section sixteen C on or before December thirty-first of the year immediately following the year in which such rate or charge becomes due, the lien for such rate or charge shall terminate on October first of the third year following the year in which such rate or charge becomes due.

Notwithstanding such lien any such overdue rate or charge may be collected through any legal means, including the shutting off of a sewer connection, which may be deemed advisable; provided, that after the termination of such a lien, no city, town or sewer district shall attempt to enforce, by shutting off the sewer connection, collection of such rate or charge from any person, not liable therefor, who has succeeded to the title or interest of the person incurring such rate or charge. All such rates and charges excluded by court decree under section seventy-six B of chapter sixty shall, to the extent that they were properly chargeable to the person owning, or to the tenant occupying, the premises for which such rates and charges were incurred, be recoverable from such person or tenant, as the case may be, in an action of contract or otherwise. If at the time of the entry of such decree such person or tenant is still the owner or tenant of the premises, whether through redemption or otherwise, such rates and charges to the extent that they were properly chargeable to him, may be enforced in any other manner provided or available for collection and enforcement of sewer connection rates and charges.

Added by St.1977, c. 586.

§ 16C. Certification of rate or charge to assessors; commitment as tax

If a rate or charge for which a lien is in effect under section sixteen B has not been added to or committed as a tax and remains unpaid when the assessors are preparing a real estate tax list and warrant to be committed by them under section fifty-three of chapter fifty-nine, the board or officer in charge of the sewer department, or the town collector of taxes, if applicable under section thirty-eight A of chapter forty-one, shall certify such rate or charge to the assessors, who shall forthwith add such rate or charge to the tax on the property to which it relates and commit it with their warrant to the collector of taxes as a part of such tax. If the property to which such rate or charge relates is tax exempt, such rate or charge shall be committed as the tax.

Added by St.1977, c. 586.

§ 16D. Application of other law; powers of tax collectors

Except as otherwise provided, the provisions of chapters fifty-nine and sixty shall apply, so far as pertinent, to all rates and charges certified to the assessors under section sixteen C. Without limiting the generality of the foregoing, upon commitment as a tax or part of a tax under said section sixteen C, all such rates and charges shall be subject to the provisions of law relative to interest on the taxes of which they become, or, if the property were not tax exempt would become, a part; and the collector of taxes shall have the same powers and be subject to the same duties with respect to such rates and charges as in the case of annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the nonpayment thereof and the redemption of land so sold or taken shall, except as otherwise provided, apply to such rates and charges.

Added by St.1977, c. 586.

§ 16E. Remedies of aggrieved real estate owners

An owner of real estate aggrieved by a charge imposed thereon under sections sixteen A to sixteen F, inclusive, in addition to such remedy as he may have under section ten of chapter one hundred and sixty-five, may apply for an abatement thereof by filing a petition with the board or officer having control of the sewer department within the time allowed by law for filing an application for abatement of the tax of which such charge is, or, if the property were not tax exempt, would have been, a part, and if such board or officer finds that such charge is more than is properly due, a reasonable abatement shall be made; and except as otherwise provided herein, the provisions of chapter fifty-nine relative to the abatement of taxes by assessors shall apply, so far as applicable, to abatements hereunder. If such petition is denied in whole or in part, the petitioner may appeal to the appellate tax board upon the same terms and conditions as a person aggrieved by the refusal of the assessors of a city or town to abate a tax.

Added by St.1977, c. 586.

§ 16F. Recovery of real estate owner against tenants

An owner of real estate who, in order to prevent the imposition of a lien thereon or to discharge the same, has paid charges for sewer connections furnished to a tenant or other person who was bound to pay the same, may recover from such tenant or other person in an action of contract the amount of the charges so paid with all incidental costs and expenses.

Added by St.1977, c. 586.

§ 17. Payment for permanent sewer privileges

The aldermen of any city except Boston or a town in which main drains or common sewers are laid may determine that a person who uses such main drains or common sewers in any manner, instead of paying an assessment under section fourteen, shall pay for the permanent privilege of his estate such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners shall determine.

§ 18. Method of assessment

The city council of a city or a town which itself is, or the officers of which are, entitled, under sections fourteen to seventeen, inclusive, or under any special act, to assess upon land the whole or a part of the cost of laying, making, maintaining or repairing main drains or common sewers, may determine that such assessments shall be made by two or more of the methods provided in said sections or special acts, and may determine what part of the expense or estimated average cost shall be paid under each method.

§ 19. Assessments; extension of time for payment

The aldermen of a city or the sewer commissioners, selectmen or road commissioners of a town may extend the time for the payment of such assessments upon land which is not built upon until it is built upon or for a fixed time; but interest at the rate of four per cent per annum shall be paid annually upon the assessment from the time it was made, and the assessment shall be paid within three months after such land is built upon or at the expiration of such fixed time.

Amended by St.1943, c. 252, § 4.

§ 20. Fee for use of sewers

The owners of land or parts thereof not liable to assessment, or not in fact assessed, may use the common sewers for the disposal of their sewage from such land only on payment of such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners shall determine.

§ 21. Assessment on land abutting on more than one way

If land abuts upon more than one way, assessments for sewers based wholly or in part upon frontage shall be assessed upon the frontage upon one such way and upon so much of the frontage upon such other way as is not exempted by the board whose duty it is to make the assessment; and such board may exempt from assessment so much of the frontage upon such other way as they consider just and equitable.

§ 22. Assessment of sewers built by landowners

If an ordinance or by-law provides than any drain or sewer laid in any land or way, public or private, which is opened or proposed to be opened for public travel and accommodation shall be a main drain or common sewer, and such drain or sewer is laid in a private way or land at the expense of the owner thereof, his land shall not be assessed for such drain or sewer, except for the cost of connecting it with common drains or sewers already established.

§ 23. Cost of sewers; payment of portion by municipality

A town by vote of its town meeting or a city by vote of its board of aldermen or city council shall determine whether it shall pay the whole or a portion of the cost of laying out and constructing main drains or of a system or systems of sewerage and sewage disposal, and if a portion, what portion. If the town or city votes to pay less than the whole cost, in providing for the payment of the remaining portion of the cost of said system or systems the town or city may avail itself of any or all of the methods of payment authorized by law to a town or city, and the provisions of chapter eighty relative to the apportionment, division, reassessment, abatement and collection of assessments, to liens therefor and to interests thereon, shall apply to assessments made under this chapter. At the same meeting at which it determines that any portion of the cost is to be borne by the town or city, it may by vote determine by which of such methods the remaining portion of said cost shall be provided.

Amended by St.1964, c. 736, § 4; St.1975, c. 228.

§ 24. Assessment for particular sewers

The owner of any land benefited by the laying out of a particular sewer from the common sewer to the boundary of the way shall pay to the town for the permanent privilege of using the same such reasonable amount as the aldermen or the sewer commissioners, selectmen or road commissioners determine, which may be fixed at the estimated average cost of all such particular sewers within the territory for which a system of sewers has been built or adopted. The board or officers authorized to lay out sewers shall assess the cost of connecting private land with a common sewer under section three upon the land so connected, and may require that an applicant for a connection of his land with a sewer shall pay in advance an amount equal to the estimated asssessment therefor, which shall be applied to the payment of the assessment, and the remainder, if any, shall be repaid to the applicant.

SIDEWALKS

§ 25. Establishment

The aldermen of a city or the selectmen or road commissioners of a town may, if in their judgment the public convenience so requires, establish sidewalks in the public ways thereof and determine the grade of each such sidewalk and the materials with which it shall be constructed, and may order the reconstruction of existing sidewalks. No such sidewalk shall be dug up or obstructed without the consent of the board or officer having charge of the maintenance and repair of public ways in a city, or the selectmen or road commissioners in a town. Each city and town shall provide a slanted curbing on sidewalks in its public ways at pedestrian crosswalks when new or replacement curbing is required at such locations.

Amended by St.1973, c. 288.

§ 26. Assessments

In the order for the construction of a new sidewalk or the reconstruction of a sidewalk with material of more permanent character than that with which it was originally constructed, the board making the order may provide for the assessment of a reasonable amount, not exceeding one half the cost, upon the abutting estates. If an ordinance or by-law so provides, the total assessed upon any individual estate shall not exceed one per cent of the value thereof as fixed by the last preceding annual assessment for taxes.

GENERAL PROVISIONS RELATING TO ASSESSMENTS

§ 27. Recording of statements; assessment liens

Whenever the aldermen of a city or the sewer commissioners, selectmen or road commissioners of a town lay out or determine to construct a sewer or drain in a public way, or in a way opened or dedicated to the public use which has not become a public way, or adopt an order for the establishment or reconstruction of a sidewalk for such a way, and assessments may be made or charges imposed under this chapter for the construction of such improvement or the use thereof, they shall forthwith cause to be recorded in the registry of deeds of the county or district in which such city or town is situated a statement of their action, which shall specify the ways in which such sewer, drain or sidewalk is located. All assessments made or charges imposed under this chapter upon land which abuts upon any such way in which such sewer, drain or sidewalk is located shall constitute a lien upon such land from the time such statement is recorded and all charges authorized by section sixteen shall from the time of assessment constitute a lien upon the land connected with the common sewer. Liens under this section shall continue for the same period and under the same conditions as a lien established under chapter eighty.

Amended by St.1943, c. 252, § 5.

§ 28. Application of betterment law

The provisions of chapter eighty relative to the apportionment, division, reassessment, abatement and collection of assessments, and to interest, shall apply to assessments made under this chapter.

§ 29. Betterment assessments created by special act; duration of lien

Notwithstanding any provision in any special act to the contrary, any lien for sewer, drain or sidewalk assessments or for betterment assessments of any other nature created pursuant to the provisions of any special act shall continue in effect until the land subject to the lien has been alienated and the instrument alienating the same has been recorded and for such longer period as any special act may provide.

Amended by St.1943, c. 252, § 3.

CHAPTER 84

REPAIR OF WAYS AND BRIDGES

HIGHWAYS AND TOWN WAYS

Sec.
8. Fences, gates or bars to prevent spread of disease; removal.

HIGHWAYS AND TOWN WAYS

§ 8. Fences, gates or bars to prevent spread of disease; removal

No surveyor, road commissioner or other person shall, without an order from the board of health, remove or take down fences, gates or bars which have been placed on a way for the purpose of preventing the spread of a disease dangerous to the public health.

CHAPTER 85

REGULATIONS AND BY-LAWS RELATIVE TO WAYS AND BRIDGES

Sec.
5. Removal of snow and ice from sidewalks by abutting landowners; penalties.
7A. Storage and use of snow removal chemicals; regulations; reports; penalty.
8. Permits for signs and other structures projecting into or over ways.
11B. Bicycles; operation and equipment; regulations; federal product safety standards, effect; races; violations; penalties.

§ 5. Removal of snow and ice from sidewalks by abutting landowners; penalties

Cities by ordinance and towns by by-laws may provide for the removal of snow and ice from sidewalks within such portions of the city or town as they consider expedient by the owner or occupant of land abutting upon such sidewalks. Such ordinances and by-laws shall determine the time and manner of removal and shall affix penalties, not exceeding fifty dollars in the case of a city or ten dollars in the case of a town, for each violation thereof.

§ 7A. Storage and use of snow removal chemicals; regulations; reports; penalty

No person shall store sodium chloride, calcium chloride or chemically treated abrasives or other chemicals used for the removal of snow or ice on roads in such a manner or place as to subject a water supply or ground-water supply to the risk of contamination. The department of environmental quality engineering, hereinafter called the department, in consultation with the department of public works, may issue regulations as to place or manner of storage of such chemicals and may, by specific order, in a particular case regulate the place where such chemicals may be used for such purpose. Any violation of this section or any regulation or order issued hereunder shall be punished by a fine not to exceed fifty dollars per day. Any person who uses more than one ton of such chemicals in any calendar year shall report annually to the department on November first, and at such other times as prescribed, the amount of such chemicals used in the previous twelve months specified by road section or other location and the amount of chemicals on hand. Copies of such reports shall be made available upon the request of any concerned state or municipal agency or commission. The department may require studies by competent professional personnel of the probable impact of proposed new or improved highways and the maintenance thereof by use of such chemicals upon reservoirs, ponds, streams, lakes, wetlands and the groundwater acquifers associated with both public and private water sources. Estimates of such chemicals to be applied on proposed roads and other paved areas shall be based upon the most recent records of chemicals actually applied as reported under the provisions of this section. The word "person" as used in this section shall include surveyors of highways, road commissioners, superintendents of streets in towns, commissioners of public works in cities and towns, the chief engineer of the state department of public works, the chief engineer of the Massachusetts Turnpike Authority, the chief administrative officer of state agencies and private persons, including corporations.

Added by St.1973, c. 1208, § 1. Amended by St.1975, c. 706, § 118.

§ 8. Permits for signs and other structures projecting into or over ways

The municipal board or officer having charge of the laying out of public ways may grant permits for the placing and maintaining of signs, advertising devices, clocks, marquees, public telephones, telephone booths and other appurtenances thereto, permanent awnings and other like structures projecting into or placed on or over public ways in its town, and may fix the fees therefor, not exceeding one dollar for any one permit, and may make rules and regulations relating thereto, and prescribe the penalties for a breach of any such rules and regulations, not exceeding five dollars for each day during which any such structure is placed or maintained contrary to the rules and regulations so made, after five days' notice to remove the same has been given by such board or officer, or by a police officer of the town. All such structures shall be constructed, and, when attached to a building, shall be connected therewith, in accordance with the requirements of the inspector of buildings, building commissioner or other board or officer having like authority in the town.

As amended St.1960, c. 88.

§ 11B. Bicycles; operation and equipment; regulations; federal product safety standards, effect; races; violations; penalties

Every person operating a bicycle upon a way, as defined in section one of chapter ninety, shall have the right to use all public ways in the commonwealth except limited access or express state highways where signs specifically prohibiting bicycles have been posted, and shall be subject to the traffic laws and regulations of the commonwealth and the special regulations contained in this section, except that: (1) the bicycle operator may keep to the right when passing a motor vehicle which is moving in the travel lane of the way, (2) the bicycle operator shall signal by either hand his intention to stop or turn, and (3) bicycles may be ridden on sidewalks outside business districts when necessary in the interest of safety, unless otherwise directed by local ordinance. A person operating a bicycle on the sidewalk shall yield the right of way to pedestrians and give an audible signal before overtaking and passing any pedestrian.

Operators of bicycles shall be subject to the following regulations:

(1) The operator shall ride single file on any way except when passing.

(2) The operator shall not ride other than upon or astride a permanent and regular seat attached to the bicycle. The operator shall not carry another person on said bicycle, except on a baby seat attached to the bicycle, provided that such seat is equipped with a harness to hold the person securely in the seat and that protection is provided against the feet of said person hitting the spokes of the wheel of the bicycle.

(3) The operator shall give an audible warning whenever necessary to insure safe operation of the bicycle; provided, however, the use of a siren or whistle is prohibited.

(4) The operator shall park his bicycle upon a way or a sidewalk in such a manner as not to obstruct vehicular or pedestrian traffic.

(5) The operator shall not permit the bicycle to be drawn by any other moving vehicle. The operator shall not tow any other vehicle or person, except that bicycle trailers properly attached to the bicycle which allow for firm control and braking may be used.

(6) The operator shall not carry any package, bundle or article except in or on a basket, rack, trailer or other device designed for such purposes. The operator shall keep at least one hand upon the handlebars at all times.

(7) Every bicycle operated upon a way shall be equipped with a braking system to enable the operator to bring the bicycle traveling at a speed of fifteen miles per hour to a smooth, safe stop within thirty feet on a dry, clean, hard, level surface.

(8) During the period from one half hour after sunset and one half hour before sunrise the operator shall display toward the front a white light which shall be visible for not less than one hundred feet in the direction in which the bicycle is proceeding or facing or a front-facing colorless reflector, and toward the rear a red light or red reflex reflector visible for not less than one hundred feet to the rear when in the lower beams of the headlamps of a motor vehicle.

(9) During the period from one half hour after sunset and one half hour before sunrise the operator shall display a reflex reflector or reflective material on the pedals visible from the front and rear

from a distance of two hundred feet when in the lower beams of the headlamps of a motor vehicle and additional reflective material visible from each side of the bicycle, either on said bicycle or on the person of the operator, for a distance of two hundred feet.

(10) No bicycle shall be operated upon a way with handlebars so raised that the operator's hands are above his shoulders while gripping them. Any alteration to extend the fork of a bicycle from the original design and construction of the bicycle manufacturer is prohibited.

(11) The operator of a bicycle shall report any accident involving either personal injury or property damage in excess of one hundred dollars, or both, to the police department in the city or town in which the accident occurred.

Any federal product safety standards relating to bicycles which are more stringent than the requirements of clauses (7) through (10), inclusive, shall supersede said requirements.

Competitive bicycle races may be held on public ways, provided that such races are sponsored by or in cooperation with recognized bicycle organizations and, provided further, that the sponsoring organization shall have obtained the approval of the appropriate police department or departments. Special regulations regarding the movement of bicycles during such races, or in training for races, including, but not limited to, permission to ride abreast, may be established by agreement between the police department and the sponsoring organization.

Violations of any provision of this section shall be punished by a fine of not more than twenty dollars. The parent or guardian of any person under age eighteen shall not authorize or knowingly permit any such person to violate any of the provisions of this section. A bicycle operated by a person under the age of eighteen in violation of this section may be impounded by the police department, or in a town which has no police department, by the selectmen, for a period not to exceed fifteen days. A violation of any provision of this section by a minor under the age of eighteen shall not affect any civil right or liability nor shall such violation be considered a criminal offense.

Added by St.1961, c. 518, § 4. Amended by St.1962, c. 346; St.1971, c. 484; St.1973, c. 806, § 2.

CHAPTER 86

BOUNDARIES OF HIGHWAYS AND OTHER PUBLIC PLACES, AND ENCROACHMENTS THEREON

Sec.
5. Removal of gates, rails, bars or fences upon or across ways.

§ 5. Removal of gates, rails, bars or fences upon or across ways

Any person may remove gates, rails, bars or fences which are upon or across a public or private way legally laid out, unless they have been placed there to prevent the spread of disease dangerous to the public health, or unless they have been erected or continued by the license of the county commissioners or of the selectmen or road commissioners or of the person for whose use such private way was laid out. A person aggrieved by such removal may apply to the county commissioners, selectmen or road commissioners, respectively, and if upon examination it appears that such gates, rails, bars or fences were erected or continued by such license, they shall order them replaced.

CHAPTER 89

LAW OF THE ROAD

Sec.
7. Right of way of fire engines, patrol wagons and ambulances.
7A. Restrictions on use of ways upon approach of fire apparatus.
7B. Operation of emergency vehicles.

§ 7. Right of way of fire engines, patrol wagons and ambulances

The members and apparatus of a fire department while going to a fire or responding to an alarm, police patrol vehicles and ambulances, and ambulances on a call for the purpose of hospitalizing a sick or injured person shall have the right of way through any street, way, lane or alley. Whoever wilfully and maliciously obstructs or retards the passage of any of the foregoing in the exercise of such right shall be punished by a fine of not more than fifty dollars or imprisonment for not more than three months.

Amended by St.1961, c. 173; St.1974, c. 144.

§ 7A. Restrictions on use of ways upon approach of fire apparatus

Upon the approach of any fire apparatus which is going to a fire or responding to an alarm, every person driving a vehicle on a way shall immediately drive said vehicle as far as possible toward the right-hand curb or side of said way and shall keep the same at a standstill until such fire apparatus has passed. No person shall drive a vehicle over a hose of a fire department without the consent of a member of such department. No person shall drive a vehicle within three hundred feet of any fire apparatus going to a fire or responding to an alarm, nor drive said vehicle, or park or leave the same unattended, within eight hundred feet of a fire or within the fire lines established by the fire department, or upon or beside any traveled way, whether public or private, leading to the scene of a fire, in such a manner as to obstruct the approach to the fire of any fire apparatus or any ambulance, safety or police vehicle, or of any vehicle bearing an official fire or police department designation. Violation of any provision of this section shall be punished by a fine of not more than one hundred dollars.

Amended by St.1952, c. 172.

§ 7B. Operation of emergency vehicles

The driver of a vehicle of a fire, police or recognized protective department and the driver of an ambulance shall be subject to the provisions of any statute, rule, regulation, ordinance or by-law relating to the operation or parking of vehicles, except that a driver of fire apparatus while going to a fire or responding to an alarm, or the driver of a vehicle of a police or recognized protective department or the driver of an ambulance, in an emergency and while in performance of a public duty or while transporting a sick or injured person to a hospital or other destination where professional medical services are available, may drive such vehicle at a speed in excess of the applicable speed limit if he exercises caution and due regard under the circumstances for the safety of persons and property, and may drive such vehicle through an intersection of ways contrary to any traffic signs or signals regulating traffic at such intersection if he first brings such vehicle to a full stop and then proceeds with caution and due regard for the safety of persons and property, unless otherwise directed by a police officer regulating traffic at such intersection. The driver of any such approaching emergency vehicle shall comply with the provisions of section fourteen of chapter ninety when approaching a school bus which has stopped to allow passengers to alight or board from the same, and whose red lamps are flashing.

Added by St.1934, c. 382. Amended by St.1964, c. 182; St.1976, c. 466.

CHAPTER 90

MOTOR VEHICLES AND AIRCRAFT

MOTOR VEHICLES

Sec.
7A. Periodic inspections of motor vehicles; buses; fee.
7B. Equipment and operation of school buses.

Sec.

7C. Minimum standards for construction and equipment of school buses.
7D. Application of section 7B; additional equipment.
7*I*. Emergency disaster service vehicles of charitable corporations; identification and equipment.
7J. Handlebars on motorcycles; rules and regulations; penalty.
7L. Standees in school buses; penalty.
7*O*. Motor vehicle pollutant control devices; removal.
8A. Operators of school buses; licensing; training; instructors.
8C. Medical advisory board; establishment in registry; opinions on standards of fitness for applicants for learner's permits or licenses as function, etc.
8D. Anatomical gifts; license renewal; donor cards; liability of registrar.
9A. Safety glass; windshields, windows.
13. Safety precautions for proper operation and parking of vehicles and buses.
16. Offensive or illegal operation of motor vehicles.

MOTOR VEHICLES

§ 7A. Periodic inspections of motor vehicles; buses; fee

The registrar shall establish rules and regulations providing for a periodic annual staggered safety and combined safety and emissions inspection of all motor vehicles; provided, however, that motor vehicles whose curb weight exceeds eight thousand pounds, motorcycles, diesel powered vehicles, motor vehicles more than fifteen model years old before the date of inspection, and motor vehicles not capable of a speed greater than twenty-five miles per hour under any condition of operation or loading on a level surface shall be exempt from such emissions inspection but shall be subject to such safety inspection, and such vehicle shall be inspected for excessive smoke emissions, as provided in section sixteen. Any regulation, as defined in section 1 of chapter thirty A, or any amendment or repeal of any such regulation adopted by the registrar pursuant to this paragraph, shall, after compliance with all applicable provision of said chapter thirty A, except section five, shall be submitted to the general court. Said registrar shall file the proposed regulation, amendment or repeal with the clerk of the house of representatives, together with a statement that the pertinent provisions of said chapter thirty A, except section five have been complied with. Such regulations shall be accompanied by a summary of the regulations in layman's terms. The clerk of the house of representatives, with the approval of the president of the senate and the speaker of the house of representatives, shall refer such regulations to the appropriate joint standing committee. Within thirty days after such referral, such committee may hold a public hearing on the regulations and shall issue a report to the registrar. Said registrar shall review said report and shall adopt final regulations as deemed appropriate in view of said report and shall file with the chairmen of such reporting committee its final regulations, not earlier than thirty days after the filing of such report with the said chairmen. Said registrar shall file the final regulations with the state secretary as provided in section five of said chapter thirty and said regulations shall thereupon take effect.

The purpose of the safety and combined safety and emissions inspection regulations shall require that motor vehicles are provided with the following equipment maintained in good order: a vehicle identification number, brakes, stop lamps, lights, directional signals, horn, exhaust system, steering and suspension systems, glazing, windshield cleaner, number plates, tires, fenders, bumpers, external sheet metal, reflectors, splash guards, chock blocks, and air pollution emission control systems or devices.

The registrar shall establish rules and regulations providing for the inspection of school buses or buses operated under a certificate, license, or permit issued in accordance with the provisions of chapter one hundred and fifty-nine A which are used for the transportation of school children to and from school and in connection with school activities other than such buses used simultaneously as public common carriers of passengers or designed primarily for mass transportation within seven days of the date on which the vehicle is first registered to a new owner and during the months of January, March, May, September and November.

The fee for the inspection of all motor vehicles which are exempt from the emissions inspection as prescribed in this section shall be four dollars; provided, however, that the fee for the combined safety and emissions inspection of all motor vehicles which are required to be so inspected by the registrar shall not exceed ten dollars. Inspection fees shall be set by agreement of the registrar and the commissioner and shall be uniform throughout the commonwealth.

Each inspection station shall remit a portion of the fee, said portion to be determined by the registrar and commissioner, for deposit in a motor vehicle inspection fund to be established by the registrar. The proceeds of this fund shall be used to meet the costs, insofar as possible, of the program for the combined safety and emissions inspection for motor vehicles.

Each applicant to become a licensee shall remit a fee established by the registrar before any license is issued pursuant to section seven W. Said fee shall be deposited in the motor vehicle inspection fund.

Said rules and regulations promulgated by the registrar pursuant to this section shall provide that a motor vehicle which is not garaged or operated within the commonwealth during its assigned inspection period may be operated for fifteen days after its return to the commonwealth if said motor vehicle bears satisfactory proof of adequate safety or emission inspection from another jurisdiction. The owner or person in control of said motor vehicle shall obtain the required safety and emissions inspection within said fifteen days.

Amended by St.1932, c. 41; St.1932, c. 271, § 2; St.1945, c. 241, § 1; St. 1950, c. 140; St.1950, c. 525; St.1951, c. 416; St.1961, c. 581; St.1962, c. 395, § 1; St.1964, c. 178; St.1964, c. 179; St.1965, c. 71; St.1966, c. 628; St.1967, c. 202, §§ 1, 2; St.1971, c. 136; St.1971, c. 1032, § 1; St. 1973, c. 423; St.1974, c. 766, § 1; St.1975, c. 233; St.1979, c. 61, § 1; St. 1979, c. 761, § 2.

§ 7B. Equipment and operation of school buses

No person shall operate any school bus, and the owner or custodian of a school bus shall not permit the same to be operated upon or to remain upon any way, unless the following requirements are complied with:—(1) The words "SCHOOL BUS" shall be painted or otherwise displayed on the front and rear of each such vehicle in black letters of eight inches in height and conform to series "B" of the standard alphabets for highway signs on a National School Bus Yellow background, or shall be so painted upon signs attached to the front and rear of each vehicle. School buses being operated on a public highway and transporting primarily passengers other than school pupils shall have the words "SCHOOL BUS" covered, removed, or otherwise concealed, and stop arms and equipment required by clauses (7) and (11) shall not be activated during the transportation of such passengers; (2) Each school bus shall contain adequate seating accommodations for each passenger transported therein, provided that any such bus in which adequate straps, handles or other supports are available for standing passengers may carry not more than twenty-five per cent more passengers than those for whom adequate seating accommodations are provided; (3) All doors shall be kept closed while the bus is in motion; (4) Each school bus shall be operated by a person eighteen years of age or over who is licensed under section eight A or who is licensed under section nine of chapter one hundred and fifty-nine A and is subject to an annual physical examination in conformity with such minimum physical qualifications as shall be determined by the registrar in collaboration with the commissioner of the department of public utilities; provided, however, that in case of any emergency such school bus may, for a period not to exceed three consecutive school days, be operated by any person, eighteen years of age or over, who is duly licensed by the registrar and has in his possession a valid Class 1 or Class 2 Massachusetts motor vehicles operator's license; and provided, further, that no person shall operate a school bus whose license to do so is suspended or revoked, or whose application to operate a school bus has been rejected by the registrar; (5) No fueling shall take place while any school bus is occupied by passengers; (6) Beginning with the chassis model year nineteen hundred and seventy-five and subsequent model years, each school bus body, fenders and grille shall be painted a color matching what is commonly known as "National School Bus Glossy Yellow" in accordance with United States motor vehicle D.O.T. Safety standard No. 17, as amended, and bumpers, lettering, wheels and trim shall be painted a glossy black, in accordance with such standard. The hood of vehicles manufactured for model year nineteen hundred and seventy-five and subsequent model years shall be painted lusterless black, in accordance with federal standards. This clause shall not apply to a motor vehicle operated under a certificate issued under section seven of chapter one hundred and fifty-nine A and a permit issued under section eight of said chapter which is designed primarily for other than pupil transportation; (7) Each school bus shall be equipped with front and rear alternating flashing red signal lamps complying with United States motor vehicle D.O.T. Safety standard No. 108, which shall be left flashing when school pupils are entering or leaving said bus. Use of alternating flashing red signal lamps for any other purpose, and at any time other than when the school bus is stopped to load or discharge pupils shall be prohibited. No person who operates such a bus shall permit the boarding or discharging of passengers therefrom unless the school bus is stopped as close as is practicable to the right-hand curb or edge of the way. Any person who operates a school bus shall announce, when discharging passengers therefrom, that all persons who wish to cross to the other side of the way shall do so by passing in front of the bus immediately upon alighting therefrom. No person shall operate a school bus on a way after discharging passengers therefrom unless all persons who wish to cross to the other side have done so; (8) Every school bus shall be equipped with a safety belt for the operator thereof, and said operator shall securely fasten said seat belt while transporting school pupils; (9) Every school bus shall be equipped with two operable front windshield wipers; (10) No person shall smoke or consume alcoholic beverages on a school bus while such bus is being used to transport school pupils; (11) A stop warning device may be mounted upon the left side of a school bus and shall only be activated to extend outward when picking up or discharging passengers. Such device when fully extended shall not protrude more than twenty-two inches outward from the left side of the body and shall be constructed with a break-a-way hinge. The use of such a device shall not be construed as increasing the width of such bus beyond the limits prescribed by section nineteen; (12) Every school bus shall be equipped with at least one interior mirror, approved by the registrar, which gives the operator a view of the rear in accordance with regulations issued by the registrar. Every school bus shall be equipped with at least two flat-surfaced rectangular exterior mirrors, approved by the registrar, one situated on each side of the bus forward of the operator, and each of said rectangular mirrors shall be mounted on the bus with a side angle adjustable convex mirror to provide an additional close-in field of vision to the operator but so as not to reduce the visual field of the flat-surfaced mirror below fifty square inches. Every school bus shall also be equipped with one convex mirror, with a diameter of at least seven and one half inches, firmly mounted on the bus so that the seated operator may observe a reflection of the road from the front bumper forward to a point where direct observation is possible, and one convex mirror, with a diameter of at least seven and one half inches, firmly mounted at the right front corner of the vehicle so that the seated operator may observe a reflection of the ground surface along the entire right hand side of the bus; (13) Every school bus shall be equipped with a first-aid kit; (14) Any school bus meeting the identification requirements of this section that is permanently converted for use wholly for purposes other than transporting pupils to and from school shall be painted a contrasting color other than National School Bus Glossy Yellow, and shall have the equipment required by clauses (1), (7), and (11) removed; (15) During each school year, each pupil transported in a school bus shall receive classroom instruction in safe riding practices, and participate at least twice in on-bus emergency evacuation drills; (16) School bus drivers shall be required to perform daily pretrip inspections of their buses and to report promptly in writing to their employer any defects or deficiencies discovered that may affect the safety of the vehicle's operation or result in its mechanical breakdown. Pretrip inspection and condition reports for school buses shall be performed in accordance with regulations established by the registrar and the commissioner of public utilities.

Added by St.1932, c. 271, § 3. Amended by St.1945, c. 241, § 1; St.1950, c. 459, § 1; St.1950, c. 502, § 2; St.1951, c. 196, § 1; St.1962, c. 515, § 1; St.1963, c. 199; St.1966, c. 74; St.1966, c. 149, § 2; St.1971, c. 803; St.1973, c. 237, § 1; St.1973, c. 238, § 1; St.1973, c. 250; St.1973, c. 314; St.1973, c. 497; St.1973, c. 925, § 12; St.1974, c. 118; St.1974, c. 555; St.1975, c. 313; St.1975, c. 878, § 2; St.1976, c. 552, §§ 1A to 3.

§ 7C. Minimum standards for construction and equipment of school buses

The registrar, after a public hearing, may make, alter, rescind or add to rules and regulations establishing minimum standards for construction and equipment of school buses, which shall apply to all school buses without regard to any prior date when they were operated as such. A violation of any rule or regulation made under this section shall be punished in the same manner as a violation of a rule or regulation made under section thirty-one. Such rules and regulations shall not apply to a motor vehicle operated by a holder of a certificate issued under section seven of chapter one hundred and fifty-nine A and a permit issued under section eight of said chapter.

Added by St.1945, c. 241, § 1. Amended by St.1948, c. 307; St.1950, c. 502, § 3; St.1951, c. 419, § 1.

§ 7D. Application of section 7B; additional equipment

The requirements of clauses (1), (2), (3), (5), (7), (8), (9), (10), (13), and (16) of section seven B shall apply to any motor vehicle having permanent seating accommodations for and carrying not more than eight passengers in addition to the operator, regularly used for the transportation of school pupils, while so used. In addition each such vehicle shall be required to be equipped with one pair of adequate chock blocks and three flares in compliance with United States motor vehicle D.O.T. Safety standard No. 125 which shall be placed upon the roadway in compliance with section fourteen B of chapter eighty-five when such vehicle becomes disabled upon the traveled portion of any street or highway.

Added by St.1947, c. 216, § 2. Amended by St.1950, c. 502, § 4; St.1969, c. 339; St.1975, c. 878, § 3; St.1976, c. 552, § 4.

§ 7*I*. Emergency disaster service vehicles of charitable corporations; identification and equipment

Special purpose motor vehicles and trailers, the property of and registered to charitable corporations, specifically assigned to the emergency disaster services of those organizations, and used for the benefit of firemen, policemen, civil defense workers and victims of fires and disasters, shall be furnished, without charge, by the registrar at his office, a number plate of the type and design furnished to ambulances, fire engines and fire apparatus. Such emergency disaster service vehicles may be equipped with sirens or other audible warning devices and with red lights capable of being displayed in the direction in which the vehicle is proceeding or facing. Such audible and visible warning devices may be used by the vehicle operator only when responding to an official alarm of fire or disaster and at no other time. Every such emergency disaster service motor vehicle shall be marked, on a part of the vehicle not readily removable, and in a conspicuous place, with the insignia of the corporation and with words identifying the vehicle as an emergency disaster service unit.

Added by St.1965, c. 823; St.1979, c. 428.

§ 7J. Handlebars on motorcycles; rules and regulations; penalty

The registrar, after a hearing, may make, amend or rescind, rules and regulations relative to handlebars on motorcycles operated in the commonwealth. A copy of such rules and regulations attested by the registrar shall be prima facie evidence that they have been made as provided by law. Whoever violates any rule or regulation made under the provisions of this section shall be punished by a fine of not more than twenty-five dollars for the first offense and not more than fifty dollars for a second or subsequent offense.

Added by St.1966, c. 8.

§ 7L. Standees in school buses; penalty

Notwithstanding the provisions of clause (2) of section seven B, in any city or town which accepts the provisions of this section, the operator of a school bus shall not allow the number of school children riding in the bus at any one time to exceed the number of seats therein, nor shall he drive said bus until each child is seated. Whoever violates the provisions of this section shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars.

Added by St.1968, c. 713, § 1.

§ 7O. Motor vehicle pollutant control devices; removal

No person shall remove or render inoperative, except temporarily for maintenance purposes, any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under the National Emission Standards Act (42 USC 1857*f*–1), unless such device or element is to be replaced by or modified by another device or element, approved by the registrar, the installation of which will result in a reduction of pollutant emission.

Added by St.1970, c. 840.

§ 8A. Operators of school buses; licensing; training; instructors

Application for a license to be a school bus operator may be made by any person who shall have attained the age of eighteen years but who has not passed his seventieth birthday and who shall have been a duly licensed motor vehicle operator for a period of three continuous years prior to his application except a person who has been licensed and whose license is not in force because of revocation or suspension or whose right to operate is suspended by the registrar; but before such a person shall be so licensed the registrar shall be satisfied that he is of good moral character and has successfully completed a driving performance test, a written test, a visual test, and a physical examination by a licensed physician within a three-month period of the date of his application in conformity with such minimum physical qualifications as shall be determined by the registrar; provided, however, that no license shall be issued to a person who has been convicted of the crime of rape, unnatural act or sodomy.

All original applicants for a registry of motor vehicles school bus driver's license or a department of public utilities driver's license when used to drive school pupils to or from school shall have first satisfactorily completed a pre-service school bus driver training program established by the commissioner of education in collaboration with the registrar and the commissioner of the department of public utilities. In addition, all renewal applicants for a registry of motor vehicles school bus driver's license or a department of public utilities driver's license when used to drive school pupils to or from school shall have first satisfactorily completed an in-service driver training program established by the commissioner of education in collaboration with the registrar and the commissioner of the department of public utilities. All original applicants for a registry of motor vehicles school bus driving instructor's certificate shall have first satisfactorily completed an instructor's training program as approved by the registrar. No person shall be employed to provide instruction in any capacity for the operation of school buses unless such person is the holder of such an instructor's certificate issued by the registrar.

Notwithstanding the provisions of section thirty-two G of chapter ninety to the contrary, a person may engage in the business of instructing in pre-service and in-service school bus driver's training programs by being a certified school bus instructor. A private driving school licensed under section thirty-two G may offer pre-service and in-service school bus driver training programs for compensation, provided that such school shall offer said training under the direction of a certified school bus driving instructor.

Applications for a certificate, under this section, may be filed with the registrar and shall contain such information as he shall prescribe. Each such application shall be accompanied by an application fee of five dollars, which in no event shall be refunded. Such persons shall pay a fee of five dollars per year to maintain said certificate. No fee or compensation shall be charged in whatever manner to the participants in the pre-service and in-service training courses.

Any such license or special permit or school bus driving instructor's certificate issued under the provisions of this section shall be valid for a period of twelve months from date of issue.

Upon application for a renewal of such license for such instructor's certificate, the registrar shall require evidence of physical fitness and may require evidence of continuing good character.

The registrar may suspend or revoke a license or instructor's certificate granted under authority of this section for a violation of any of the provisions of this chapter, or on other reasonable grounds, or where, in his opinion, the licensee or instructor is either physically or morally unfit to retain the same.

The registrar may make such rules and regulations as he may deem necessary to carry out the provisions of this section.

Added by St.1962, c. 515, § 2. Amended by St.1966, c. 144, § 3; St.1970, c. 100; St.1973, c. 925, § 13; St.1975, c. 878, § 4; St.1976, c. 552, § 5; St.1977, c. 368; St.1978, c. 535, §§ 1 to 5; St.1979, c. 188.

§ 8C. Medical advisory board; establishment in registry; opinions on standards of fitness for applicants for learner's permits or licenses as function, etc.

There is hereby created in the registry a medical advisory board, consisting of the commissioner of the department of public health or his designee, who shall serve as chairman thereof, and fifteen members appointed by the registrar and approved by said commissioner, who shall be registered under the laws of the commonwealth as qualified physicians, optometrists or chiropractors, but not more than one of said appointees shall be a chiropractor and not more than one of said appointees shall be an optometrist. The members of the said board except said commissioner, shall serve at the pleasure of the registrar. The registrar may refer to said board for advisory opinions on standards of fitness for applicants for learner's permits or licenses to operate motor vehicles, and, in addition, for advisory opinions on the applications of persons who apply for learner's permits or licenses to operate motor vehicles or whose right to operate has been suspended or revoked, or whenever the registrar has reason to believe that the operation of a motor vehicle by such persons upon any way or in any place to which members of the public have access as invitees or licensees would be a threat to the safety and the welfare of the public because of physical or mental disability. The board shall meet at the call of said commissioner at such times and places as he may select, but shall convene at the request of the registrar. Said commissioner shall provide such facilities as he may determine to be necessary or appropriate to the function of the board. Each member of the board shall receive as compensation for his service thereon a sum not to exceed thirty-five dollars for each meeting he attends.

Added by St.1973, c. 766.

§ 8D. Anatomical gifts; license renewal; donor cards; liability of registrar

The registrar shall cause to be included in every notice of license renewal sent to a person licensed to operate a motor vehicle under this chapter a document containing a summary description and explanation of the anatomical gift act, as provided for in chapter one hundred and thirteen, and a donor card suitable for use by a person wishing to donate tissue or organs pursuant to the applicable provisions of said chapter one hundred and thirteen. Said donor card shall include the definition of qualified donee, as specified in section nine of said chapter one hundred and thirteen.

The registrar shall make available a suitable decal to be affixed to the license of a person who has signified his intention to make an anatomical gift under the provisions of said chapter one hundred and thirteen.

The registrar may, on behalf of the commonwealth, accept and use gifts of materials to carry out the provisions of this section, and may, on behalf of a charitable institution, accept gifts, contributions and bequests of funds from individuals, foundations and from federal or other governmental bodies for the purpose of furthering the provisions of chapter one hundred and thirteen and may transmit the same to such institution; may make and sign any agreements and may do and perform any and all acts which may be necessary or desirable to carry out the purposes of this section.

Neither the registrar or any employee of the commonwealth shall be liable in a suit for damage as a result of his acts or omissions or for any action under the provisions of this section.

Added by St.1975, c. 879, § 1.

§ 9A. Safety glass; windshields, windows

No person shall operate any motor vehicle, and the owner or custodian of motor vehicle shall not permit the same to be operated with partitions, doors, windows or windshields of glass unless such glass is of a type known as safety glass. The term "safety glass", as used herein, shall include any glass designed to minimize the likelihood of personal injury from its breaking or scattering when broken. This section shall not apply to motor vehicles manufactured prior to January first, nineteen hundred and thirty-six.

Amended by St.1932, c. 168, § 1; St.1935, c. 393, § 1; St.1949, c. 358; St.1952, c. 100; St.1974, c. 15.

§ 13. Safety precautions for proper operation and parking of vehicles and busses

No person, when operating a motor vehicle, shall permit to be on or in the vehicle or on or about his person anything which may interfere with or impede the proper operation of the vehicle or any equipment by which the vehicle is operated or controlled, except that a person may operate a motor vehicle while using a citizens band radio or mobile telephone as long as one hand remains on the steering wheel at all times. No person having control or charge of a motor vehicle, except a person having control or charge of a police, fire or other emergency vehicle in the course of responding to an emergency or a person having control or charge of a motor vehicle while engaged in the delivery or acceptance of goods, wares or merchandise for which the vehicle's engine power is necessary for the loading or unloading of such goods, wares or merchandise, shall allow such vehicle to stand in any way and remain unattended without stopping the engine of said vehicle, effectively setting the brakes thereof or making it fast, and locking and removing the key from the locking device and from the vehicle.

Whenever a bus having a seating capacity of more than seven passengers, a truck weighing, unloaded, more than four thousand pounds, or a tractor, trailer, semi-trailer or combination thereof, shall be parked on a way, on a grade sufficient to cause such vehicle to move of its own momentum, and is left unattended by the operator, one pair of adequate wheel safety chock blocks shall be securely placed against the rear wheels of such vehicle so as to prevent movement thereof. The provisions of the preceding sentence shall not apply to a vehicle equipped with positive spring-loaded air parking brakes. No person shall drive any motor vehicle equipped with any television viewer, screen or other means of visually receiving a television broadcast which is located in the motor vehicle at any point forward of the back of the driver's seat, or which is visible to the driver while operating such motor vehicle. Whoever operates a motorcycle on the ways of the commonwealth shall ride only upon the permanent and regular seat attached thereto, and he shall not carry any other person, nor allow any other person to ride, on such motorcycle unless it is designed to carry more than one person, in which case a passenger may ride upon the permanent and regular seat if such seat is designed for two persons, or upon another seat which is intended for a passenger and is firmly attached to the motorcycle to the rear of the operator if proper foot rests are provided for the passenger's use, or upon a seat which is intended for a passenger and is firmly attached to the motorcycle in a side car. No person or persons, except firefighters acting pursuant to their official duties, shall occupy a trailer or semi-trailer while such trailer or semi-trailer is being towed, pushed or drawn or is otherwise in motion upon any way. No person shall operate a motor vehicle while wearing headphones, unless said headphones are used for communication in connection with controlling the course or movement of said vehicle.

Amended by St.1949, c. 707; St.1950, c. 305; St.1950, c. 763; St.1967, c. 93; St.1967, c. 192; St.1973, c. 476; St.1974, c. 24; St.1977, c. 469; St.1978, c. 94; St.1978, c. 264; St.1979, c. 232.

§ 16. Offensive or illegal operation of motor vehicles

No person shall operate a motor vehicle, nor shall any owner of such vehicle permit it to be operated, in or over any way, public or private, whether laid out under authority of law or otherwise, which motor vehicles are prohibited from using, provided notice of such prohibition is conspicuously posted at the entrance to such way. No person shall operate a motor vehicle, nor shall any owner of such vehicle permit it to be operated upon any way, except fire department and fire patrol apparatus, unless such motor vehicle is equipped with a muffler to prevent excessive or unnecessary noise, which muffler is in good working order and in constant operation, and complies with such minimum standards for construction and performance as the registrar may prescribe. No person shall use a muffler cut-out or by-pass. No person shail operate a motor vehicle on any way which motor vehicle is equipped (1) with a muffler from which the baffle plates, screens or other original internal parts have been removed and not replaced; or (2) with an exhaust system which has been modified in a manner which will amplify or increase the noise emitted by the exhaust. No person operating a motor vehicle shall sound a bell, horn or other device, nor in any manner operate such motor vehicle so as to make a harsh, objectionable or unreasonable noise, nor permit to escape from such vehicle smoke or pollutants in such amounts or at such levels as may violate motor vehicle air pollution control regulations adopted under the provisions of chapter one hundred and eleven. No siren shall be mounted upon any motor vehicle except fire apparatus, ambulances, vehicles used in official line of duty by any member of the police or fire fighting forces of the commonwealth or any agency or political subdivision thereof, and vehicles owned by call fire fighters or by persons with police powers and operated in official line of duty, unless authorized by the registrar. No person shall use on or in connection with any motor vehicle a spot light, so called, the rays from which shine more than two feet above the road at a distance of thirty feet from the vehicle, except that such a spot light may be used for the purpose of reading signs, and as an auxiliary light in cases of necessity when the other lights required by law fail to operate.

No person, except a duly authorized person driving an emergency fire vehicle, shall operate a motor vehicle equipped with metal studded tires upon a public way between May the first and November the first; provided, however, the registrar may authorize the use of such tires before November the first, if weather conditions require the use thereof. Whoever violates the provisions of this paragraph shall be punished by a fine of not more than fifty dollars.

Amended by St.1961, c. 66; St.1965, c. 239; St.1968, c. 11; St.1971, c. 412; St.1971, c. 1032, § 2; St.1973, c. 46; St.1974, c. 233.

CHAPTER 91

WATERWAYS

Sec.
59. Discharge of petroleum products, refuse or other matter into or on lakes, rivers or tidal waters; penalty; exception; enforcement.
59A. Tort liability for discharge or deposit of crude petroleum or products; double damages.
59B. Marinas; licensing by division of water pollution control; restrictions; term; renewal; fees.

§ 59. Discharge of petroleum products, refuse or other matter into or on lakes, rivers or tidal waters; penalty; exception; enforcement

Whoever pumps, discharges or deposits, or causes to be pumped, discharged or deposited, into or on the waters of any lake or river or into or on tidal waters and flats, any crude petroleum or any of its products or any other oils or any bilge water or water from and receptacle containing any of the said substances, or any other matter or refuse, in such manner and to such extent as to be a pollution or contamination of said waters or flats or a nuisance or be injurious to the public health, shall be punished by a fine of not more than one thousand dollars; but this section shall not be construed to prohibit the use of oil for the extermination of mosquitoes or other insects. The provisions of this section shall be enforced by the department of public safety and by all other officers authorized to make arrests.

Amended by St.1969, c. 384; St.1971, c. 135, § 1.

§ 59A. Tort liability for discharge or deposit of crude petroleum or products; double damages

Whoever, by himself or his agent, so negligently pumps, discharges or deposits any crude petroleum or any of its products or any other oils or any bilge water or water from any receptacle containing any of the said substances into or on the waters of any lake or river or into or on tidal waters or flats in such manner as to cause damage to the property of another shall be liable in tort to the person whose property is so damaged in double the amount of the damages sustained by him. The use of oil for the extermination of mosquitoes or other insects on the waters of any lake or river or on tidal waters or flats declared to be a breeding place of mosquitoes or other insects, by a town, city or mosquito control project acting under chapter two hundred and fifty-two or any special law, shall not be deemed to be a violation of the provisions of this section, provided such use of oil conforms to the rules and regulations promulgated by the pesticide board.

Added by St.1967, c. 507. Amended by St.1969, c. 373.

§ 59B. Marinas; licensing by division of water pollution control; restrictions; term; renewal; fees

No marina shall be operated without a license issued by the division of water pollution control. Said division shall not issue any such license unless such marina provides (1) adequate facilities for the collection, treatment and disposal of sewage or other sanitary waste, as said division may specify, including facilities for the purging out and cleaning of holding tanks, the contents of which shall be then disposed of in such manner as not to be discharged into or near any waters of the commonwealth, unless such discharge is to a municipal sewerage system or to an adequate sewage treatment or disposal facility approved by the division of water pollution control; (2) adequate and conveniently located dockside toilet facilities for the use of the occupants of watercraft; and (3) adequate and conveniently located trash receptacles or similar devices designed for the disposal of litter and refuse.

Any license issued under this section shall be for a term of one year and may be renewed annually. The fee for such annual license shall be fifty dollars and the fee for a renewal of such license shall be ten dollars.

Added by St.1970, c. 693, § 2.

CHAPTER 92

METROPOLITAN SEWERS, WATER AND PARKS

METROPOLITAN SEWERAGE DISTRICT

Sec.
9. Plumbing of estates; branch intercepting sewers.

METROPOLITAN WATER DISTRICT

17. Rules and regulations for protection of waters; posting; publication; evidence of promulgation.
18. Diversion, pollution or waste of water; injury to property.
19. Application of section 18.
20. Enforcement of laws and rules relating to water works.
21. Jurisdiction of supreme judicial and superior court; petition; enforcement of laws.
22. Penalties.
23. Application of laws as to municipal water supplies.

PARKS

39. Pollution of Charles river.

MISCELLANEOUS PROVISIONS

76. Removal of sewage or polluting matter; prevention of pollution.
76A. Permit to take water from basin; hearing; approval.

METROPOLITAN SEWERAGE DISTRICT

§ 9. Plumbing of estates; branch intercepting sewers

In this section surface or storm water and such other waters as shall be specified by the department of public health shall be designated as waters and all other waters and sewage shall be designated as sewage. The owner of every estate whose sewage is to be taken into any metropolitan sewer shall, in plumbing his estate, so arrange the plumbing as to keep the waters separate from the sewage, and shall, as directed by the officer having charge of the maintenance of sewers in the town, make connections for, and conduct, the waters into the drain and the sewage into the sewer; but where only one conduit shall have been provided in the street by the town, such owner shall, as directed by said officer, construct said connections into the street and connect them with the conduit so provided, and the town shall provide the other conduit and all necessary connections with either conduit.

Any town, except Boston, using any metropolitan sewer may, in any year, and shall, in any year specified by the officer or board having charge of sewers, expend one twentieth of one per cent of its taxable valuation, to be met by loan outside the debt limit, in the construction, in connection with said sewers, of branch intercepting sewers, connections of existing sewers with intercepting sewers, branch drains, sewers or drains in any street where one thereof only shall have been built, and the necessary connections aforesaid.

The supreme judicial and superior courts may enforce this section.

METROPOLITAN WATER DISTRICT

§ 17. Rules and regulations for protection of waters; posting; publication; evidence of promulgation

The department of environmental quality engineering shall make rules and regulations for the sanitary protection of such waters used by the commission for the water supply of any town or water company aforesaid. The commission shall cause such rules and regulations to be posted at or near the waters to which they respectively apply, and shall also cause the same to be published at least once in a newspaper published in the county where said waters are in whole or in part situated, and such posting and publication shall be sufficient notice to all persons. The sworn certificate of any member of the commission or of its secretary of such posting and publication, or of the posting or publication of an order made by the commission, shall be prima facie evidence thereof. A copy of any such rule, regulation or order, attested by any member of the commission or by its secretary, shall be prima facie evidence that said rule, regulation or order was made by the department of public health or by the commission, as the case may be.

Any of such waters abandoned as a source of water supply of any town or water company aforesaid shall thereafter be open to all inhabitants of the commonwealth for fishing purposes.

Amended by St.1945, c. 693, § 1; St.1975, c. 706, § 132.

§ 18. Diversion, pollution or waste of water; injury to property

No person shall take or divert any water of a water supply of any town in said metropolitan water district from any water source, reservoir, conduit or pipe used for supplying such water to or in any such town, or occupy, injure or interfere with any such water, or any land, building, aqueduct, pipe, drain, conduit, hydrant, machinery or other work or property so used, and no person shall corrupt, render impure, waste or improperly use any such water.

§ 19. Application of section 18

The preceding section shall not apply to any person in taking or diverting any such water or interfering with or occupying any water, land or works therein described, by permission of the commission, or the water board, water commissioners or superintendent of any town having charge of the land, water or works; nor to the individual inhabitants of any town within the watershed of any water supply used by the commission, or by any town aforesaid, in taking from the part of the supply or from the tributaries of the supply within their respective town limits so much of the water thereof as they shall need for their ordinary domestic household purposes, for extinguishing fires or for generating steam.

§ 20. Enforcement of laws and rules relating to water works

The commission, and its employees designated for the purpose, shall enforce sections ten to nineteen, inclusive, and the rules, regulations and orders made thereunder, and may enter into any building, and upon any land for the purpose of ascertaining whether sources of pollution there exist, and whether said sections and the rules, regulations and orders made as aforesaid are complied with; and, where the enforcement of any such laws, rules, regulations or orders will require public works for the removal or purification of sewage, the commission shall not enforce the same until it has provided such works, and the amount paid therefor shall be considered as part of the expenses of construction of the metropolitan water works, and such works shall be maintained and operated as a part of said water works.

§ 21. Jurisdiction of supreme judicial and superior court; petition; enforcement of laws

The supreme judicial or superior court or any justice of either court shall, on petition of the commission or of any town or person interested, have jurisdiction in equity or otherwise to enforce sections ten to nineteen, inclusive, and any rule, regulation or order made thereunder, and to prevent any violation of said sections, rules, regulations or orders.

§ 22. Penalties

Whoever violates any provision of sections ten to nineteen, inclusive, or violates or refuses to comply with any rule, regulation or order made thereunder, shall be punished by a fine of not more than five hundred dollars or by imprisonment not exceeding one year in the house of correction, or both. Any such fine shall be to the use of the commonwealth.

§ 23. Application of laws as to municipal water supplies

All general laws relating to the water supplies of towns or the lands and other property used for such supplies shall, so far as consistent with the provisions of this chapter relating to the metropolitan water system, apply to and be observed in carrying out said provisions.

PARKS

§ 39. Pollution of Charles river

The commission may make rules and regulations prohibiting the pollution of the Charles river within the metropolitan parks district. Any person violating any rule or regulation made hereunder shall be punished by fine not exceeding one thousand dollars.

MISCELLANEOUS PROVISIONS

§ 76. Removal of sewage or polluting matter; prevention of pollution

The commission may order the removal of all sewage and other polluting matter or factory waste as a common nuisance from the Charles river and its tributaries below Waltham and from the Charles river basin; and no sewer, drain or overflow or other outlet for factory or house drainage or for any other drainage shall hereafter be connected with said basin or the river below Waltham without the approval of the commission.

§ 76A. Permit to take water from basin; hearing; approval

The metropolitan district commission, after a public hearing notice of which shall be sent to the department of environmental quality engineering and to all cities and towns bordering on the Charles river basin, as defined by section two of chapter five hundred and twenty-four of the acts of nineteen hundred and nine and acts in amendment thereof and in addition thereto, and subject to the approval of said department as hereinafter provided, may grant to any such city or town which accepts sections seventy-six A to seventy-six E, inclusive, by vote of the city council or selectmen a permit to take water from said basin for purposes of fire protection and of sale, at such price as the municipality may determine, to manufacturing establishments within its limits for cooling and condensing purposes. A city or town receiving such a permit may construct and maintain on lands owned by it all necessary works and pumping stations and may lay and maintain in such lands and in its streets all necessary mains and pipes, and, to such extent and on such terms and conditions as may be authorized in such permit, may lay said mains and pipes on or in lands under the control of the commission. Any permit granted hereunder shall prescribe the maximum amount of water which may be drawn from said basin thereunder, and the place and manner of taking said water and of the return of said water except such as is used for fire protection, and shall provide for the metering of said water both at the place of taking and of return, and for reimbursing the commission for all expenses of supervision and inspection. Such permit shall also prescribe the location, and the mode of construction and of laying, of all works, mains and pipes within lands under the commission's control, and such other terms and conditions as in the commission's opinion the public interest may require. No such permit shall be granted except in such form as shall be approved by said department, and no construction shall be commenced or carried on thereunder until all plans and specifications have been submitted to and approved by said department.

Amended by St.1975, c. 706, §§ 135, 136.

TITLE XV

REGULATION OF TRADE

CHAPTER 93

REGULATION OF TRADE AND CERTAIN ENTERPRISES

REGULATION OF THE SALE OF HEARING AIDS

Sec.
71. Definitions.
72. Purchases and sales of hearing aids, prerequisites.
73. Conflict of interests; inducement to influence recommendation of purchase.
74. Sales and delivery receipts; copies of medical clearance and hearing evaluation; customer records.
75. Violations, effect; rules.

REGULATION OF THE SALE OF HEARING AIDS

§ 71. Definitions

As used in sections seventy-two to seventy-five, inclusive, the following words shall have the following meanings:

"Audiologist", a person who has at a minimum a master's degree in audiology and a minimum of three hundred hours of supervised practical training, and meets the requirements of the American Speech and Hearing Association certificate of clinical competence in audiology.

"Hearing aid", an electronic instrument or device worn on the human body for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, but excluding batteries, cords and earmolds; provided, that equipment devices and attachments offered by a public utility company and used in conjunction with its services shall not be included within this definition.

"Hearing test evaluation", a written statement from a physician, audiologist or otolaryngologist, prepared in triplicate, based on testing conducted by such physician, audiologist, or otolaryngologist that includes the following information: the ear or ears to be fitted and the date of the hearing test.

"Person", an individual, partnership, association, organization or corporation.

"Physician", a person licensed in the commonwealth in accordance with the provisions of section two of chapter one hundred and twelve.

"Otolaryngologist", a physician licensed in the commonwealth who specializes in medical problems of the ear, nose and throat, and who is eligible for qualification by the American Board of Otolaryngology as an otolaryngologist.

"Sell" or "sale", a transfer of title to a hearing aid or transfer of the right to possession of a hearing aid by sales contract, lease, bailment, loan or any other means, excluding wholesale transactions of dealers and distributors.

"Medical clearance", a written statement, from a physician or otolaryngologist, prepared in triplicate, based on a medical examination by such physician or otolaryngologist, that concludes that the prospective purchaser has been examined, that the physician or otolaryngologist has determined that the prospective purchaser is a candidate for a hearing aid and that there are no medical conditions to contraindicate the use of a hearing aid. Such statement shall include the date of the medical clearance, and whether or not the person, at the time of the medical examination, owns or uses a hearing aid for the designated ear.

Added by St.1977, c. 978, § 1. Amended by St.1978, c. 353, § 1.

§ 72. Purchases and sales of hearing aids, prerequisites

No person shall enter into a contract for the sale of or sell a hearing aid unless within the preceding six months the prospective purchaser has first obtained a medical clearance and then a hearing test evaluation.

No person shall sell a hearing aid not conforming to the hearing test evaluation required by this section without written approval from the physician, audiologist or otolaryngologist involved.

No person except a person whose religious beliefs preclude consultation with a physician may waive the requirement of either a medical clearance or a hearing test evaluation.

This section shall not apply to the replacement of an identical hearing aid within three years of the date that the purchaser received the hearing aid.

Added by St.1977, c. 978, § 1. Amended by St.1978, c. 353, § 2.

§ 73. Conflict of interests; inducement to influence recommendation of purchase

No physician, otolaryngologist, or audiologist acting pursuant to section seventy-two shall sell hearing aids or have a direct or indirect membership, employment, co-ownership, or proprietary interest in or with a business which fits and sells hearing aids; provided, that this restriction shall not apply to a non-profit or charitable organization, clinic, hospital or health care facility.

No person directly or indirectly shall give or offer to give or permit or cause to be given money or anything of value to a physician, otolaryngologist or audiologist as an inducement to influence the recommendation of the purchase of a hearing aid.

Nothing in this section shall prevent a physician, audiologist, or otolaryngologist from suggesting a specific make and model of a hearing aid.

Added by St.1977, c. 978, § 1. Amended by St.1978, c. 353, § 3.

§ 74. Sales and delivery receipts; copies of medical clearance and hearing evaluation; customer records

Every person who sells a hearing aid shall accompany such sale with a receipt that shall include: the name, address and signature of the purchaser; the date of consummation of the sale; the name and address of the regular place of business and the signature of the seller; the make, model, serial number and purchase price of the hearing aid; a statement whether the hearing aid is new, used or reconditioned; the terms of the sale, including an itemization of the total purchase price, including but not limited to the cost of the hearing aid, the earmold, any batteries or other accessories, and any service costs; a clear and precise statement of any guarantee or trial period; and shall also include the following printed statement in ten point type or larger: "This hearing aid will not restore normal hearing nor will it prevent further hearing loss. According to state law, no hearing aid may be sold to you without first a prior medical examination, and than a hearing test evaluation."

A copy of the medical clearance statement and hearing test evaluation, where required, for the hearing aid shall be attached to the receipt.

Upon the date that the purchaser receives the hearing aid, the seller shall provide a delivery receipt signed by the seller and the purchaser which states the date of delivery to the purchaser of the hearing aid.

The seller shall keep records for every customer to whom he renders services or sells a hearing aid including a copy of such receipt, a copy of the medical clearance and the hearing test evaluation, a copy of the delivery receipt, a record of services provided, and any correspondence to or from the customer. Such records shall be preserved for at least four years after the date of the last transaction.

Added by St.1977, c. 978, § 1.

§ 75. Violations, effect; rules

Violations of the provisions of sections seventy-two to seventy-four, inclusive, in the course of a sale of a hearing aid shall void such sale.

Violations of any of the provisions of sections seventy-two to seventy-four, inclusive, shall constitute an unfair and deceptive trade practice under the provisions of chapter ninety-three A. Such violations may be reported to the office of the attorney general or the secretary of the executive office of consumer affairs. The office of the attorney general may make such rules and regulations as are necessary to carry out the purposes of sections seventy-one to seventy-five, inclusive.

Added by St.1977, c. 978, § 1.

CHAPTER 93A

REGULATION OF BUSINESS PRACTICES FOR CONSUMERS PROTECTION

Sec.

1. Definitions.
2. Unfair practices; legislative intent; rules and regulations.
3. Exempted transactions.
4. Actions by attorney general; notice; venue; injunctions.
5. Assurance of discontinuance of unlawful method or practice.
6. Examination of books and records; attendance of persons; notice.
7. Failure to appear or to comply with notice.
8. Habitual violation of injunctions; effect.
9. Civil actions and remedies; class action; demand for relief; damages; costs; exhausting administrative remedies.
10. Notice to attorney general; injunction, prima facie evidence.
11. Persons entitled to bring actions for unfair trade practices; class actions; damages; injunction; costs.

Library References

Trade Regulation ⚷861 et seq.

C.J.S. Trade-Marks, Trade-Names, and Unfair Competition § 237.

§ 1. Definitions

The following words, as used in this chapter unless the text otherwise requires or a different meaning is specifically required, shall mean:

(*a*) "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(*b*) "Trade" and "commerce" shall include the advertising, the offering for sale, rent or lease, the sale, rent, lease or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

(*c*) "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(*d*) "Examination of documentary material", the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material.

Added by 1967, c. 813, § 1. Amended by St.1969, c. 814, § 1; St.1972, c. 123.

§ 2. Unfair practices; legislative intent; rules and regulations

(*a*) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(*b*) It is the intent of the legislature that in construing paragraph (*a*) of this section in actions brought under sections four, nine and eleven, the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(*a*) (1) of the Federal Trade Commission Act (15 U.S.C. 45(*a*) (1)), as from time to time amended.

(*c*) The attorney general may make rules and regulations interpreting the provisions of subsection 2(*a*) of this chapter. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(*a*) (1) (The Federal Trade Commission Act), as from time to time amended.

Added by St.1967, c. 813, § 1. Amended by St.1978, c. 459, § 2.

§ 3. Exempted transactions

(1) Nothing in this chapter shall apply to

(*a*) transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth or of the United States; or

(*b*) trade or commerce of any person of whose gross revenue at least twenty per cent is derived from transactions in interstate commerce, excepting however transactions and actions which (*i*) occur primarily and substantially within the commonwealth, and (*ii*) as to which the Federal Trade Commission or its designated representative has failed to assert in writing within fourteen days of notice to it and to said person by the attorney general its objection to action proposed by him and set forth in said notice; or (*c*) transactions or actions of any person who shows that he has had served upon him by the Federal Trade Commission a complaint pursuant to 15 U.S.C. 45(*b*) relating to said transactions or actions until the Federal Trade Commission has either dismissed said complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating to said complaint pursuant to 15 U.S.C. 45(*b*).

(2) For the purpose of this section the burden of proving exemption from the provisions of this chapter shall be upon the person claiming the exemption.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 2.

§ 4. Actions by attorney general; notice; venue; injunctions

Whenever the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the commonwealth against such person to restrain by temporary restraining order or preliminary or permanent injunction the use of such method, act or practice. The action may be brought in the superior court of the county in which such person resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person has no place of business within the commonwealth. Said court may issue temporary restraining orders or preliminary or permanent injunctions and make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any moneys or property, real or personal, which may have been acquired by means of such method, act, or practice.

At least five days prior to the commencement of any action brought under this section, except when a temporary restraining order is sought, the attorney general shall notify the person of his intended action, and give the person an opportunity to confer with the attorney general in person or by counsel or other representative as to the proposed action. Such notice shall be given the person by mail, postage prepaid, to his usual place of business, or if he has no usual place of business, to his last known address.

Any district attorney or law enforcement officer receiving notice of any alleged violation of this chapter or of any violation of an injunction or order issued in an action brought under this section shall immediately forward written notice of the same together with any information that he may have to the office of the attorney general.

Any person who violates the terms of an injunction or other order issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than ten thousand dollars for each violation.

For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the attorney general acting in the name of the commonwealth may petition for recovery of such civil penalty.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 3; St. 1971, c. 130; St.1972, c. 544.

§ 5. Assurance of discontinuance of unlawful method or practice

In any case where the attorney general has authority to institute an action or proceeding under section four, in lieu thereof he may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or to have been engaged in such method, act or practice. Such assurance may, among other terms, include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance shall be in writing and be filed with the superior court of Suffolk county. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest. Evidence of a violation of such assurance shall be prima facie evidence of a violation of section two in any subsequent proceeding brought by the attorney general.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 3.

§ 6. Examination of books and records; attendance of persons; notice

(1) The attorney general, whenever he believes a person has engaged in or is engaging in any method, act or practice declared to be unlawful by this chapter, may conduct an investigation to ascertain whether in fact such person has engaged in or is engaging in such method, act or practice. In conducting such investigation he may (*a*) take testimony under oath concerning such alleged unlawful method, act or practice; (*b*) examine or cause to be examined any documentary material of whatever nature relevant to such alleged unlawful method, act or practice; and (*c*) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(2) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney gen-

eral at least ten days prior to the date of such taking of testimony or examination.

(3) Service of any such notice may be made by (*a*) delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person; (*b*) delivering a duly executed copy thereof to the principal place of business in the commonwealth of the person to be served; or (*c*) mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(4) Each such notice shall (*a*) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (*b*) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (*c*) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (*d*) prescribe a return date within which the documentary material is to be produced; and (*e*) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(5) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth; or require the disclosure of any documentary material which would be privileged, or which contains trade secret information, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(6) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same.

(7) At any time prior to the date specified in the notice, or within twenty-one days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be ad-

missible in evidence in any criminal prosecution for substantially identical transactions.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 3.

§ 7. Failure to appear or to comply with notice

A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this chapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, custody or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

The attorney general may file in the superior court of the county in which such person resides or has his principal place of business, or of Suffolk county if such person is a nonresident or has no principal place of business in the commonwealth, and serve upon such person, in the same manner as provided in section six, a petition for an order of such court for the enforcement of this section and section six. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 3.

§ 8. Habitual violation of injunctions; effect

Upon petition by the attorney general, the court may for habitual violation of injunctions issued pursuant to section four order the dissolution, or suspension or forfeiture of franchise of any corporation or the right of any foreign corporation to do business in the commonwealth.

Added by St.1967, c. 813, § 1. Amended by St.1969, c. 814, § 4.

§ 9. Civil actions and remedies; class action; demand for relief; damages; costs; exhausting administrative remedies

(1) Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under paragraph (*c*) of said section two may, as hereinafter provided, bring an action in the superior court whether by way of original complaint, counterclaim, cross-claim or third-party action for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

(2) Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs.

(3) At least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent. Any person receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner. In all other cases, if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper. The demand requirements of this paragraph shall not apply if the prospective respondent does not maintain a place of business or does not keep assets within the commonwealth, but such respondent may otherwise employ the provisions of this section by making a written offer of relief and paying the rejected tender into court as soon as practicable after receiving notice of an action commenced under this section.

(3A) A person may assert a claim under this section in a district court, whether by way of original complaint, counterclaim, cross-claim or third-party action, for money damages only. Said damages may include double or treble damages, attorneys' fees and costs, as herein provided. The demand requirements and provision for tender of offer of settlement provided in paragraph (3) shall also be applicable under this paragraph, except that no rights to equitable relief shall be created under this paragraph, nor shall a person asserting a claim hereunder be able to assert any claim on behalf of other similarly injured and situated persons as provided in paragraph (2). The provisions of sections ninety-five to one hundred and ten, inclusive, of chapter two hundred and thirty-one, where applicable, shall apply to a claim under this section, except that the provisions for remand, removal and transfer shall be controlled by the amount of single damages claimed hereunder.

(4) If the court finds in any action commenced hereunder that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action; provided, however, the court shall deny recovery of attorney's fees and costs which are incurred after the rejection of a reasonable written offer of settlement made within thirty days of the mailing or delivery of the written demand for relief required by this section.

(5) The provisions of clause (*c*) of paragraph (1) of section three shall not apply to actions brought pursuant to this section.

(6) Any person entitled to bring an action under this section shall not be required to initiate, pursue or exhaust any remedy established by any regulation, administrative procedure, local, state or federal law or statute or the common law in order to bring an action under this section or to obtain injunctive relief or recover damages or attorney's fees or costs or other relief as provided in this section. Failure to exhaust administrative remedies shall not be a defense to any proceeding under this section, except as provided in paragraph seven.

(7) The court may upon motion by the respondent before the time for answering and after a hearing suspend proceedings brought under this section to permit the respondent to initate action in which the petitioner shall be named a party before any appropriate regulatory board or officer providing adjudicatory hearings to complainants if the respondent's evidence indicates that:

(*a*) there is a substantial likelihood that final action by the court favorable to the petitioner would require of the respondent conduct or practices that would disrupt or be inconsistent with a regulatory scheme that regulates or covers the actions or transactions complained of by the petitioner established and administered under law by any state or federal regulatory board or officer acting under statutory authority of the commonwealth or of the United States; or

(*b*) that said regulatory board or officer has a substantial interest in reviewing said transactions or actions prior to judicial action under this chapter and that the said regulatory board or officer has the power to provide substantially the relief sought by the petitioner and the class, if any, which the petitioner represents, under this section.

Upon suspending proceedings under this section, the court may enter any interlocutory or temporary orders it deems necessary and proper pending final action by the regulatory board or officer and trial, if any, in the court, including issuance of injunctions, certification of a class, and orders concerning the presentation of the matter to the regulatory board or officer. The court shall issue appropriate interlocutory orders, decrees and injunctions to preserve the status quo between the parties pending final action by the regulatory board or officer and trial and shall stay all proceedings in any court or before any regulatory board or officer in which petitioner and respondent are necessarily involved. The court may issue further orders, injunctions or other relief while the matter is before the regulatory board or officer and shall terminate the suspension and bring the matter forward for trial if it finds (*a*) that proceedings before the regulatory board or officer are unreasonably delayed or otherwise unreasonably prejudicial to the interests of a party before the court, or (*b*) that the regulatory board or officer has not taken final action within six months of the beginning of the order suspending proceedings under this chapter.

(8) Except as provided in section ten, recovering or failing to recover an award of damages or other relief in any administrative or judicial proceeding, except proceedings authorized by this section, by any person entitled to bring an action under this section, shall not constitute a bar to, or limitation upon relief authorized by this section.

Added by St.1969, c. 690. Amended by St.1970, c. 736, §§ 1, 2: St. 1971, c. 241; St.1973, c. 639; St.1978, c. 478, §§ 45, 46.

§ 10. Notice to attorney general; injunction, prima facie evidence

Upon commencement of any action brought under section nine or section eleven, the clerk of the court shall mail a copy of the bill in equity to the attorney general and, upon entry of any judgment or decree in the action, the clerk of the court shall mail a copy of such judgment or decree to the attorney general.

Any permanent injunction or order of the court made under section four shall be prima facie evidence in an action brought under section nine or section eleven that the respondent used or employed an unfair or deceptive act or practice declared unlawful by section two.

Added by St.1969, c. 690. Amended by St.1972, c. 614, § 1.

§ 11. Persons entitled to bring actions for unfair trade practices; class actions; damages; injunction; costs

Any person who engages in the conduct of any trade or commerce and who suffers any loss of money or property, real or personal, as a result of the use or employment by another person who engages in any trade or commerce of an unfair method of competition or an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under paragraph (*c*) of section two may, as hereinafter provided, bring an action in the superior court whether by way of original complaint, counterclaim, cross-claim or third-party action for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

Such person, if he has not suffered any loss of money or property, may obtain such an injunction if it can be shown that the aforementioned unfair method of competition, act or practice may have the effect of causing such loss of money or property.

Any persons entitled to bring such action may, if the use or employment of the unfair method of competition or the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective, practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such a manner as the court directs.

A person may assert a claim under this section in a district court, whether by way of original complaint, counterclaim, cross-claim or third-party action, for money damages only. Said damages may include double or treble damages, attorneys' fees and costs, as hereinafter provided, with provision for tendering by the person against whom the claim is asserted of a written offer of settlement for single damages, also as hereinafter provided. No rights to equitable relief shall be created under this paragraph, nor shall a person asserting such claim be able to assert any claim on behalf of other similarly injured and situated persons as provided in the preceding paragraph. The provisions of sections ninety-five to one hundred and ten, inclusive, of chapter two hundred and thirty-one, where applicable, shall apply to a claim under this section, except that the provisions for remand, removal and transfer shall be controlled by the amount of single damages claimed hereunder.

If the court finds for the petitioner, recovery shall be in the amount of actual damages; or up to three, but not less than two, times such amount if the court finds that the use or employment of the method of competition or the act or practice was a willful or knowing violation of said section two. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper. The respondent may tender with his answer in any such action a written offer of settlement for single damages. If such tender or settlement is rejected by the petitioner, and if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner, then the court shall not award more than single damages.

If the court finds in any action commenced hereunder, that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorneys' fees and costs incurred in said action.

The provisions of subclause (*ii*) of clause (*b*) of paragraph (1) of section three shall not apply to actions brought pursuant to this section. In any action brought under this section, in addition to the provisions of paragraph (*b*) of section two, the court shall also be guided in its interpretation of unfair methods of competition by those provisions of chapter ninety-three known as the Massachusetts Antitrust Act.

Added by St.1972, c. 614, § 2; St.1978, c. 459, § 3; St.1978, c. 478, §§ 47, 48.

CHAPTER 94

INSPECTION AND SALE OF FOOD, DRUGS AND VARIOUS ARTICLES

DEFINITIONS

Sec.

1. Definitions.

BAKERIES AND BAKERY PRODUCTS

2. Cleanliness and sanitary condition of bakery and equipment; shipping baskets.
3. Storage, handling and transportation of bakery products.
4. Preparation of bakery products; labeling.
5. Return of bakery products; movement of bakery products to consumer; exceptions.
6. Establishment and enforcement of rules relative to exemptions, standards and requirements.
7. Weight of loaves.
8. Special provisions as to rolls and certain bread; unit weights; inspection.
9. Enforcement of rules and regulations; seizures; notice; hearing before director; appeals.

9A. Construction of bakery rooms; furniture and utensils.
9B. Sleeping places.
9C. Notice requiring alterations.
9D. Regulations of boards of health; posting.
9E. Penalties for violation of sections 9A to 9C.
9F. Rules and regulations of department of public health.

FOOD, DRUGS & VARIOUS ARTICLES

Sec.

9G. Sanitary requirements of bakeries.
9H. Dressing rooms.
9*I*. Sitting or lounging on tables and other equipment; animals or fowls.
9J. Sanitary regulations for bakery employees; facilities.
9K. Inspection of bakeries; notice to owner, etc., of failure to comply with law; remedy.
9L. Closing of bakery; hearing; appeal.
9M. Approval of building plans and equipment; permits.
10. Penalty.

NON-ALCOHOLIC BEVERAGES

10A. Permit to manufacture, bottle, sell, deliver, etc.
10B. Granting permits; expiration; renewals; fees.
10C. Examination of licensed premises; revocation of permits.
10D. Storage, handling and transportation of ingredients.
10E. Rules and regulations.
10F. Penalties.
10G. Application of sections 10A to 10F.

ENRICHMENT OF BREAD AND FLOUR

10H. Enriched bread and flour; manufacture and sale; purchase of unenriched flour.
10*I*. Powers of department of public health; enforcement of rules and regulations; examinations and investigations.
10J. Labeling; application.
10K. Penalties.

BAKING POWDER

11. Labeling regulated; penalty.

MILK AND CREAM

12. Milk and cream, definitions, standards; rules.
12A, 12B. Repealed.
13. Rules for milk and raw milk products.
13A. Repealed.
13B. State in which milk produced; statement on package.
13C. Sale of other than established grades of milk; penalty.
13D. Sale of milk not conforming to standard grade; penalty.
13E. Bacterial standards; milk and cream sales and deliveries.
14, 15. Repealed.
16. Dairy farm; cream.
16A. Certificate of registration required for sale of milk.
16B. Applications for registration of dairy farms.
16C. Issuance and renewal of certificates; inspection, etc.
16D. Refusal, revocation or suspension of certificate.
16E. Monthly statements.
16F. Registration of dealers.
16G. Temporary certificates.

Sec.
16H. Temporary receipt of milk from unregistered dairy farms.
16*I*. Penalties.
16J. Rules for handling and sale of milk.
16K. Inspection and approval of milk plants and receiving stations, etc.; permits; expiration.
16L. Sale of milk from plant or station not inspected and approved or to which permit not issued.
17. Repealed.
17A. Combinations of fats or oils with milk, cream or skimmed milk; penalty.
18. Sale of milk of less fat content than stated on label, etc.; penalty.
19. Repealed.
20. Sale of below standard milk; penalty.
21. Labeling of cream; sale of cream not conforming to standard; penalties.
22 to 24. Repealed.
25. Accuracy of measuring utensils or devices used in determining component content of milk or cream for inspection or payment; prior testing and verification; fee.
26. Annual inspection of testing equipment; seal; fee; condemnation; additional inspection cost.
27. Testing method and equipment; approval; certificate of competency for operators; requirements; fee.
27A. Persons receiving raw milk at dairy farms; determination of payment; necessity of certificate of competency; requirements; fee.
28. License to operate; issuance to persons certified under section 27; revocation or suspension; reinstatement; fees.
28A. License to receive raw milk at dairy farms; issuance to persons certified under section 27A; temporary or emergency license; revocation or suspension; reinstatement; fees.
29. Continued supervision of licensed and certified persons; dissemination of technical information; additional evidence of competency; inspection; report of violations; amendment of rules and regulations.
29A. Rules and regulations governing tests for determining component content of milk or cream and procedures for receiving raw milk at dairy farms.
30. Enforcement of sections 25 to 31; inspection; violations; prosecutions; application to educational and informational service to dairy farmers.
31. Interference with directors or agents; violations of sections 25 to 30 or rules and regulations; penalty.
32. Milk stations.
33. Inspectors of milk and collectors of samples of milk.
34. Designation and employment of board members as collector.
35. Powers of inspectors and collectors; appointment; removal.
36. Result of analysis sent to owner.
37. Liability of producer of milk.
38. Connivance by or interference with inspector.

Sec.
39. Use of imitation or counterfeit seal.
40. License to sell milk; contents; display.
41. License; fee; term, suspension or revocation; appeal; reinstatement; notice; list of dealers.
41A. Dealers selling to other than consumers; license.
42. Selling milk without license; penalty
42A. Definitions applicable to this section and sections 42B to 42J; licensing of buyers; application; bond or other security; fee.
42B. Bond; amount; form; condition; note, cash or collateral in lieu of bond.
42C. Default by licensee; notices; action on bond; payment of claims.
42D. Insufficient bond or other security; notice to commissioner; statement of assets, liabilities and disbursements; additional security.
42E. Exemption from filing bond or security.
42F. Records of transactions.
42G. Investigation of financial standing and business conduct of applicant or licensee; information disclosed confidential.
42H. Grounds for refusal to grant license or revocation.
42*I*. Notice and hearing before revocation; order; decision final.
42J. Unlicensed receiving of milk from producers; penalty.
42K, 43. Repealed.
44. Fees for inspection or tests; dairies, etc., prohibited; penalty.
45. Milk containers; names on caps or labels; fees; penalty.
46, 47. Repealed.
48. Placing of offal, swill, etc., in containers; penalty.
48A. Licensing of pasteurization establishments; penalty.
48B. Use by certain institutions of milk produced in commonwealth.
48C. Repealed.
48D. Blending milk and cream for sale.
48E. Repealed.

BUTTER, CHEESE AND LARD

49. Oleomargarine; sale; labeling; marking.
50. Imitation cheese; labeling.
51. Unlawful sale or advertising of imitation butter and cheese; penalty.
52, 53. Repealed.
54. Manufacture, sale and advertising of certain imitation butter; penalty; application of section.
55. Fraud in sale of oleomargarine.
56, 57. Repealed.
58. Serving oleomargarine at hotels, restaurants, etc.; notice; penalty.
59. Process or renovated butter; sale; labeling.
60. Complaints for violations of sections relative to oleomargarine, butter and cheese.
61. Lard; sale; advertising; labeling.
61A. Cheddar or American cheese.
62. Interference with inspector of milk, etc.; penalty.
63. Disposition of fines.

FROZEN DESSERTS AND FROZEN DESSERT MIX

Sec.
64 to 65F. Repealed.
65G. Definitions.
65H. Application for licenses and permits; suspension; revocation; inspection.
65*I*. Issuance of licenses or permits.
65J. Revocation or suspension of licenses or permits.
65K. Certiorari to correct errors of law.
65L. Certain sales or exchanges prohibited.
65M. Pasteurization.
65N. Sale after manufacture in unclean, etc., places or manner.
65*O*. Adulteration.
65P. False labeling.
65Q. Enforcement of sections 65G to 65U; rules and regulations.
65R. Penalties.
65S. Fees for licenses and permits.
65T. Frozen dietary dairy desserts; rules and regulations.
65U. Standards of identity and labeling; regulations establishing.

COLD STORAGE

66. Licensing of cold storage warehouses; suspension; report of articles in cold storage.
66A. Application of sections 66, 70 and 71 to food in lockers; locker defined.
67. Inspection and supervision; rules and regulations.
68. Access to cold storage or refrigerating warehouses by department, etc.
69. Regulation of cold storage.
70. Time limit for holding food in cold storage; extension.
71. Date of receipt of food in cold storage; marking on containers.
72. Sale of goods formerly held in cold storage; displaying sign.
73. Penalties.

FROZEN FOOD

73A. Transportation; frozen food defined; construction; penalty.

FISH

74 to 77. Repealed.
77A. Classification of fish; definition.
77B. Marking containers deposited in cold storage; date of receipt.
77C. Sale of frozen fish otherwise than frozen.
77D. Importation of fresh swordfish.
77E. Marking of imported fish formerly in cold storage.
77F. Sale of food fish by weight; exception.
77G. Use of dead lobsters for food purposes; rapid freezing of live lobsters.
77H. Purchase, sale or transportation of lobster or crab meat taken from shell; seizure; confiscation; permit for sale; inspection of premises; marking of packages.
77*I*. Definitions.

Sec.

78 to 83. Repealed.

84. Quintal weight of fish.

85. Clam bait; contents of barrel.

86. Weighing, sorting and culling fish; certificate of weight; rules and regulations.

87. Record of weight, etc.

88. Fees for weighing.

88A. Repealed.

88B. Sale of shucked scallops or quahaugs in shell by weight.

88C. Rules and regulations.

88D. Inspection of fish offered for sale; seizure and destruction of unfit fish; disposition of money; penalty.

EGGS

89. License to can eggs; application; rules and regulations.

90. Canning eggs without license; penalty.

90A. Sale of eggs regulated; eggs with treated shells.

90B. Standard sizes for eggs offered for sale, etc.; exception; rules and regulations.

90C. Grades; establishment.

90D. Grades; criterion; marking; enforcement of section; rules and regulations.

90E. Penalty for violation of section 90D.

91. Sale of eggs taken from cold storage; markings; penalty.

92. Denaturing and marking of broken eggs in cold storage.

92A. Sale of decayed or decomposed eggs; regulations; penalty.

MEATS, POULTRY AND FISH

92B. Sales at retail; weight; penalty.

CHOCOLATE

93 to 95. Repealed.

FRUITS, VEGETABLES AND NUTS

96. Sale by dry measure or numerical count; "original standard container" defined; penalty.

97. Repealed.

98. Capacity of baskets, etc., used in sale of berries; test of capacity.

99. Strike or level measure; exception.

99A. Standard box for farm produce; standard half box; lug; specifications; markings.

99B. Sale of fruit, vegetables or turkeys; designation as "native"; penalty.

APPLES

100. Repealed.

101. Official grades; establishment; modification; notice; hearing.

102. Marking or branding.

103. Advertisement.

104. Misleading packing.

105. Misbranding.

Sec.
106. Rules and regulations; access to packing places and storehouses; samples.
107. Enforcement of sections 99B, 101 to 105, 109; prosecutions; notice.
108. Penalties.
109. Storage; conditions; storage records.
110 to 114. Repealed.

CRANBERRIES

115. Legal and standard barrel and crate for cranberries.
116. Barrels and crates; one half crates; one quarter crates; markings.
117. Sale of cranberries in packages.

FARM PRODUCTS

117A. Official grades and standards for farm products; use of brands or labels.
117B. Establishment of grades or standards and determination of brands or labels; notice; publication.
117C. Unlawful use of brands or labels; obstruction of commissioner.
117D. Inspection of farm products; certification of quality and condition.
117E. Rules and regulations.
117F. Powers of commissioner of agriculture.

POTATOES

117G. Definitions.
117H. Marking of container of potatoes; display of grade; application of section.
117*I*. Official grades of potatoes; modification; notice; hearing; United States grades.
117J. Powers of commissioner; rules and regulations.
117K. Violations; notice; hearing.
117L. Penalties.

SLAUGHTER HOUSES

118. Definitions for sections 118 to 131, inclusive.
119. Supervision and inspection; rules and regulations; suspension of license and closure.
120. License; acting without; application; fee.
121. Suspension or revocation of license; hearing.
122. Hearings board; members; expenses; chairman; duties.
123. Meat and poultry advisory board; members; term; meetings; expenses; duties.
124. Inspection of livestock and poultry; seizure and destruction; reports; publication.
125. Inspections; quarantine; segregation, marking and labeling products; prohibiting products; sanitation regulations; required records.
126. Duties of commissioner.
127. Prohibited acts.
128. Failure to testify or to produce evidence; falsification of reports; penalties.

Sec.
129. Violations; penalties; jurisdiction.
130. Exempt operations.
131. Inspection, establishments under official United States inspection.
132. Severability of provisions.
133 to 139A. Repealed.
139B. Sale of dressed poultry slaughtered without commonwealth; inspection.
139C. Definitions.
139D. Prohibited methods.
139E. Administration of act; rules and regulations.
139F. Penalties.
139G. Ritual slaughter.

WEIGHERS OF BEEF

140. Appointment; oath.
141. Fees.

SAUSAGES

142. Adulteration of sausage or sausage meat.
143. Sale, etc., of sausages.
143A. Sale of vegetable sausages.
143B. Manufacture of sausage in colored casing.
143C. Penalty for violation of section 143B.
144, 145. Repealed.

INSPECTION AND SALE OF MEAT, ETC.

146. Inspection; seizure and condemnation; appeal; market limits.
147. Regulations for inspection of meat.
147A. Regulations for inspection of game, poultry, etc.
148. Penalties.
149. Interference with officers and agents of local boards of health.
150. Sale of unwholesome food.
150A. Exposing unwholesome food for sale.
151. Sale of veal of calf less than two weeks old.
151A. Sale and serving of horse meat regulated.
152. Publication of facts relating to condemnation of animal or property.
152A. Licensing business of buying and selling poultry.
152B. Transportation of live poultry; bill of sale; memorandum.
152C. Penalties for violations of sections 152A and 152B.
152D. Application for license; statement of business; bond; default; claims, etc.
152E. Contracts for raising and delivery of poultry.
152F. Applicability of sections 152A to 152G; powers of commissioner; contractual producers.
152G. Investigations by commissioner, etc.
153. Sale of poultry not dressed.
153A. Penalties.

PUBLIC HEALTH

CANNED GOODS AND MOLASSES

Sec.
154. Labeling of canned goods; grade; quality.
155. Marking of canned soaked goods and molasses.
156. False stamping or labeling; wrongful use or display of word "kosher," etc.; enforcement.

ICE

157. Sale of ice at retail.
158. Scales for vehicles used for retail delivery; list of current prices.
159. Posting of prices on vehicles; weighing ice.
160. Impure ice.
161. Enforcement of orders of department of public health.
162. Appeal from order.

VINEGAR

163. Definition; adulteration.
164. Examination of vinegar; methods; publication.
165. Container used for sale of vinegar; marking; labeling.
166. Collection of samples of vinegar; analysis.
167. Examination of samples; complaint for misbranding or adulteration; hearing.
168. Imitation or counterfeit seal; possession; use; penalty.
169. Enforcement of penalties.
170. Manufacture or sale of deleterious vinegar; penalty.
171. Sale, etc., of adulterated vinegar; penalty.

CERTAIN STANDARDS

172. Barrel and hogshead.
173. Repealed.
174. Cental.
174A. Standard weights of containers for grain products.
175. Repealed.

SALES BY WEIGHT

176. Weight; definition; tolerances or variations.
177. False or insufficient weight or measure; misrepresentation of weight, quantity, or price; penalties.
178. Rules for weighing; certification; public weighers.
179. Repealed.
180. Jurisdiction of court; complaints and prosecutions.

MARKING OF PACKAGES CONTAINING FOOD

181. Net quantity of food packages; marking; application of section.
182. Variations; tolerances and exceptions; rules and regulations.
183. Penalties.
184. Hearing before prosecution; prosecution of guarantor.
184A. Packages of propriety or patent medicine or food containing drugs; labeling.

FOOD, DRUGS & VARIOUS ARTICLES

ADULTERATION AND MISBRANDING OF FOOD AND DRUGS

Sec.
185, 185A. Repealed.
186. Adulteration of drugs, foods, cosmetics and devices defined.
187. "Misbranding" term defined when applied to drugs, foods, cosmetics and devices; when not to be deemed adulterated, etc.
187A to 187C. Repealed.
187D. Evasion of sections 186, 187 and 188 to 195; penalties.
187E to 187H. Repealed.
188. Samples of food; collection; purchase.
189. Examination of samples, by whom made, etc.; complaints.
189A. Proceedings when food, drugs, cosmetics or devices suspected of being adulterated or misbranded; penalty.
190. Penalty on manufacturer, etc.
191. Repealed.
192. Rules and regulations.
193. Prosecutions in certain cases forbidden; guaranty for protection; rules and regulations.
194. Dealer establishing guaranty may be prosecuted, when.
194A. Adulterated shellfish; prosecution; defenses.
194B. Food fish products; labeling as "halibut"; penalty.
195. Construction and enforcement of sections 186 to 195.
196. Repealed.

SALE AND DISTRIBUTION OF NARCOTIC DRUGS

197 to 217E. Repealed.

GRAIN AND MEAL

218. Repealed.
219. Weighers of grain.
220. Repealed.
221. Fees of weighers.
222. Certificate of sale by cental.
223. Repealed.
224. False weights, scales, etc.; false and fraudulent certificate; collusion.

COMMERCIAL FEEDING STUFF

225. Tag or label affixed to commercial feeding stuff; form and content.
226. Tags or labels affixed to packages of commercial feeding stuff offered for sale.
227. Filing copy of tag or label with commissioner; fee.
228. Filing certified copy of tag or label for registration; fee.
229. Registration of tag or label; certificate of registration; disposition of fees.
230. Misleading or deceptive names, brands or trade marks.

Sec.
231. Analysis of commercial feeding stuff and cattle feed.
231A. Methods for collection and delivery of samples for analysis pursuant to section 231.
232. Results of analysis; publication; free analysis.
233. Taking of samples for analysis; procedure.
234. Sale without tag or label or with unregistered or cancelled tag or label.
235. Rules and regulations; enforcement.

HAY

236. Weighers of hay.

TIMOTHY OR HERDSGRASS SEED

237. Sale and delivery of seed; avoirdupois weight.

COAL, COKE, CHARCOAL AND KINDLING WOOD

238. Weighers of coal.
239. Repealed.
239A. Standard sizes for anthracite coal; variances or tolerances.
240. Sale of coal, coke and charcoal by weight.
241. Sale of coal, coke and charcoal in bags, sacks or baskets.
242. Sale of coal, coke and charcoal in baskets or receptacles; requisites.
243. Sale of coke and charcoal in paper bags or sacks; specifications; measure; marking.
244. Certificate of weight; contents; examination.
245. Direction that goods be weighed; powers of director of standards, etc., and sealer.
246. Record of weights and measures; keeping.
247. Sale of edgings and kindling wood.
248. Penalties; enforcement of law.
249. Possession of illegal measures; penalty.
249A. Inspection of coal; analysis of samples; condemnation.
249B. Interference with officials; penalty.
249C. Sale of condemned coal.
249D. Sale of unfit coal.
249E. Placing foreign substances in coal receptacles; sale.
249E½. Presumption of excessiveness of non-combustible residue.
249F. Enforcement of sections 249A to 249E½.

MATERIAL FOR ROAD CONSTRUCTION

249G. Repealed.

HEATING OILS

249H. Heating oil standards; rules and regulations; samples; entry and inspection; violations; penalties.

COMMERCIAL FERTILIZERS

250. Sale regulated; label, form and contents.
251. Affixing labels to packages; bulk sales.

Sec.

252. Guaranteed analysis, provisions of label as.
253. Sale of commercial fertilizer with false or untrue label.
254. Sale of commercial fertilizer; filing copy of label; analysis fee.
255. Sworn statement; permit; fee; cancellation of certificate.
256. Certificate of filing of label; issuance; cancellation, etc.
256A. Methods for collection and delivery of samples for analysis pursuant to section 256.
257. Annual analysis; samples; fees; publication of reports; free analysis.
258. Taking of samples for analysis.
259. Disposition of fees.
260. Rules and regulations; complaints.
261. Hindering or obstructing commissioner, inspector or deputy; penalty.

AGRICULTURAL AND OTHER SEEDS

261A to 261L. Repealed.

LIME AND LIME CASKS

262. Inspectors of lime.
263. Branding casks of lime.
264. Fees of inspectors.
265. Quality of lime and casks.
266. Sale of lime in unauthorized casks; penalty.
267. Shifting contents of branded casks.
268. Forfeiture of casks.

MARBLE, SOAPSTONE AND FREESTONE

269. Repealed.

UPHOLSTERED FURNITURE, BEDDING AND STUFFED TOYS

270. Definitions.
271. Licensing; manufacturers and retailers; powers of director.
272. Labeling; manner; power of department; reciprocity; removal of labels.
273. Licensing; establishments for sterilization; examination of establishments; sterilizations.
274. Rules and regulations; advisory board.
275. Licenses; applications; fees.
276. Inspector; powers and duties.
277. Penalties.

FURS, ETC.

277A. Marking or labelling of furs; misrepresentations.

IMPORTED GOODS

277B. Foreign goods or services; marking; advertisement; penalty.

NAILS

Sec.
278. Nails and brads; manufacture; packing.
279. Marking or branding of casks.
280. Sale of unbranded or unmarked casks of nails or brads.
281. Counterfeiting brand, etc.; penalty.
282. Disposition of forfeitures.

SLOT MACHINES, ETC.

283. Slot machines and other automatic devices, use regulated.
284. Penalty.

THREAD

285. Sewing thread; sale; marking.
286. Sewing thread; identification of manufacturer or distributor.
287. Weight or measure variances.
288. Penalty.

TURPENTINE, PAINTS AND LINSEED OIL

289. Turpentine; manufacture; sale; marking; adulteration.
290. Enforcement of section 289.
291. Sale of paint or linseed oil.
292. Possession by dealer of incorrectly labeled turpentine, paint or linseed oil.
293. Inspection of paint, etc.; complaint; appointment of inspectors; powers and duties.
294. Interference with inspector.
295. Unlawful sale.

PETROLEUM PRODUCTS

295A. Definitions.
295B. Licensing of retail dealers.
295C. Display of price of motor fuel on dispensing devices.
295D. Advertisement of motor fuel.
295E. Posting price on pump or other dispensing device; duration; selling price; rebates, premiums, etc.; restrictions; penalties; inapplicability to self-service pump dispensing.
295F. Marking of brand name, etc., of product on above-ground storage or dispensing equipment.
295G. Standards for gasoline; adulteration or substitution of motor fuel or lubricating oil.
295H. Administration and enforcement of sections 295A to 295*O*.
295*I*. Orders, rules and regulations; adoption; amendment; repeal.
295J. Records of retail dealer.
295K. Penalty for violation of sections 295A to 295J.
295L. Jurisdiction of superior court; injunctions.
295M. Conflicts with other laws.
295N. Partial invalidity.
295*O*. Citation of sections 295A to 295*O*; Motor Fuel Sales Act.
295P. Retail sale of motor fuel below cost.

Sec.
295Q. Cost survey as evidence of cost.
295R. Application of sections 295P to 295W to retail sales.
295S. Penalty for violating section 295P.
295T. Jurisdiction of superior court; injunctions; prosecutions by district attorneys.
295U. Conflicts with other laws.
295V. Partial invalidity.
295W. Citation of sections 295P to 295W; Unfair Sales Act for the Retail Sale of Motor Fuels.
295X. Repealed.

SEAT SAFETY BELTS

295Y. Repealed.

PETROLEUM FUEL

295Z to 295BB. Repealed.

WOOD AND BARK

296. Measurers of wood and bark.
297. Acting in adjoining towns.
298. Cordwood, firewood and kindling wood; sale; measurement.
299. Sale of cordwood or firewood; delivery ticket or sale invoice; violations.
300. Fees of measurers.
301. Measurement of water borne wood; fees.
302. Tickets certifying quantity in load; application of sections 296 to 303.
303. Sale of prepared wood, bark, slabs and edgings for fuel; surveyors and inspectors.

METHYL OR WOOD ALCOHOL

303A. Licensing of manufacture, sale and transportation.
303B. Fees for licenses; renewals; suspensions; records.
303C. Marking containers.
303D. Sale by unlicensed person; sale to minors; sale for drinking purposes prohibited.
303E. Penalty.

FUEL OILS

303F. Delivery ticket; contents; use of copies; inspection; evidence; penalty.

ANTI-FREEZE SOLUTIONS

303G. Definitions.
303H. Minimum standards; adulteration.
303*I*. Misbranded anti-freeze; labels for containers.
303J. Inspection of sample; issuance and cancellation of permits.
303K. Enforcement; samples; inspection of premises, etc.
303L. Rules and regulations.
303M. Penalty.

GENERAL PROVISIONS AND PENALTIES

Sec.
304. Vendor to furnish sample for analysis, when; penalty.
305. Fraud in packing commodities sold by weight; penalties.
305A. Improper manufacture, preparation, etc. of food; food defined; rules and regulations; penalties.
305B. Medical examination of persons handling food; rules and regulations; employment of persons afflicted with disease; food defined.
305C. Certificate of registration; rules and regulations; application of section.
305D. Restaurants; devices or procedures to remove food lodged in persons' throats; insurance; tort immunity.
306. General penalty for counterfeit or wrongful branding or marking of articles.
307. Tobacco products contaminated by fire, smoke or water; possession or sale; penalty.

VENDING MACHINES

308. Definitions.
309. License; necessity; application; issuance; display; fees.
310. List of locations; inspection of premises.
311. Suspension or revocation of license; notice and hearing; reinstatement of license.
312. Food, beverage and ingredients processed and prepared outside commonwealth; conditions for sale.
313. Penalties.

ELECTRIC APPLIANCES

314. Definitions applicable to sections 315 to 318.
315. Display or offer for sale, or sale, of certain appliances prohibited.
316. Labels required; regulations; information; form, etc.
317. Standardized computation and testing procedures; regulations; determination of energy cost and efficiency information; report of results by manufacturer, et al.; failure to report; false reports; enforcement remedies.
318. Penalties; violations of sections 315 and 317.

METAL DRINK CONTAINERS

319. Construction of malt beverage or soft drink metal containers.

DEFINITIONS

§ 1. Definitions

The following words as used in this section and the other sections of this chapter to which their definition is hereinafter respectively limited, unless the context otherwise requires, shall have the following meanings:

"Article of food", in sections sixty-six to seventy-three, inclusive, includes fresh meat, fresh meat products except in process of manufacture, fresh food fish, poultry, eggs and butter.

"Bakery", in sections two to nine M, inclusive, a building or part of a building wherein is carried on the production, preparation, packing, storing, display or sale of bread, cake, pies or other bakery products, including any separate room used for the convenience or accommodation of workers.

"Commissioner", the commissioner of food and agriculture.

"Cold storage", in sections sixty-six to seventy-three, inclusive, and ninety-two, the storage of articles of food at or below a temperature of forty-five degrees Fahrenheit for a period of thirty days or more.

"Cold storage or refrigerating warehouse", in sections sixty-six to seventy-three, inclusive, and ninety-two, an establishment employing refrigerating machinery or ice for the purpose of refrigeration, or a place otherwise artificially cooled, where articles of food are stored for thirty days or more at or below a temperature of forty-five degrees Fahrenheit.

"Copy", in sections two hundred and twenty-five to two hundred and thirty-five, inclusive, and sections two hundred and fifty to two hundred and sixty-one, inclusive, any certified copy.

"Cosmetic", in sections one hundred and eighty-six to one hundred and ninety-five, inclusive, includes (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap.

"Device" means instruments, apparatus, surgical implants, sutures and contrivances, including their components, parts and accessories, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or to affect the structure or any function of the body of man or other animals.

"Director", in sections twenty-five to thirty-one, inclusive, director of the Massachusetts agricultural experiment station of the university of Massachusetts.

"Drug", in sections one hundred and eighty-six to one hundred and ninety-six, inclusive, includes all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of man or animal.

"Food", in sections one hundred and eighteen to one hundred and fifty-one, inclusive, one hundred and fifty-four to one hundred and fifty-six, inclusive, one hundred and eighty-one, one hundred and eighty-six to one hundred and ninety-six, inclusive, and three hundred and five C, includes all articles, whether simple, mixed or compound, used for food or drink, confectionery or condiment, by man or animal.

"Label", in sections one hundred and eighty-six to one hundred and ninety-five, inclusive, means a display of written, printed or graphic matter upon the immediate container of any article. A requirement that any word, statement or other information appear on the label is not complied with unless such word, statement or other information also appears on the outside container or wrapper of the retail package of such article, or is easily legible through the outside container or wrapper.

"Labeling" means all labels and other written, printed or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.

"Oleomargarine" includes butterine, margarine, imitation butter and any article, substance or compound made in imitation or semblance of or as a substitute for butter and not made exclusively and wholly of milk or cream, or containing fats, oils or grease not produced from milk or cream.

"Paint", in sections two hundred and ninety-one to two hundred and ninety-five, inclusive, includes white lead, oxide or zinc, and red lead, dry or in any kind of oil, and any compound intended for the same use, colors ground in oil, paste or semi-paste paint, and liquid or mixed paint ready for use.

"Sausage" or "sausage meat", in sections one hundred and forty-two to one hundred and forty-five, inclusive, comminuted meat from neat cattle, swine, veal, sheep, poultry, or a mixture of such meats, either fresh, salted, pickled or smoked, with or without added salt, spices, cereal and the like, and with or without the addition of edible fats, blood and sugar, or subsequent smoking.

"Milk plant" and "manufactory" shall include, respectively, a place where milk or cream is received or purchased from producers for sale or resale and a place where it is so received or purchased for manufacture into other products, with or without facilities or equipment for its preparation for market or for its manufacture, as the case may be, and with or without physical facilities, at the place where the milk or cream is purchased, for the receiving or physical handling thereof.

"Enriched bread", in sections ten H to ten J, inclusive, shall mean white bread, rolls and buns which shall contain in the finished product thiamine, riboflavin, niacin or niacinamide, iron and calcium in quantities prescribed by the regulations of the department of public health.

"Enriched flour", in sections ten H to ten J, inclusive, shall include flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, which shall contain thiamine, riboflavin, niacin or niacinamide, iron and calcium in quantities prescribed by the regulations of the department of public health; but does not include special flours not used for bread, roll, bun or biscuit baking such as specialty cake, pancake and pastry flours.

"Person", in sections ten H to ten K, inclusive, shall mean an individual, corporation, partnership, an association, joint stock company, a trust or an unincorporated organization, to the extent that the same may be engaged in the commercial manufacture or sale of flour, white bread or rolls.

"Rolls", in sections ten H to ten J, inclusive, includes plain white rolls and buns of the semi-bread dough type, such as soft rolls, hamburger, hot dog, or Parker House rolls and similar rolls, and also hard rolls, such as Vienna and Kaiser rolls and similar rolls, all made without fillings or icing, but shall not include yeast-raised sweet rolls and sweet buns, cinnamon rolls or buns, butterfly rolls or buns.

"White bread", in sections ten H to ten J, inclusive, shall mean any bread, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as "white bread", including but not restricted to Vienna bread, French bread and Italian bread.

Amended by St.1932, c. 158; St.1933, c. 67, §§ 1 to 5; St.1933, c. 338, § 1; St.1937, c. 335, §§ 1, 2; St.1937, c. 362, § 1; St.1938, c. 363, § 1; St. 1939, c. 196, § 1; St.1946, c. 377, § 1; St.1948, c. 444, § 1; St.1949, c. 334, § 9; St.1955, c. 757, § 1; St.1956, c. 663, § 1; St.1957, c. 581, §§ 1 to 3; St.1959, c. 396, § 1; St.1959, c. 528, § 1; St.1959, c. 611, § 1; St.1961, c. 301, § 1; St.1961, c. 600, § 1; St.1962, c. 243; St.1967, c. 216, § 1; St.1971, c. 795, § 1; St.1972, c. 365, § 1; St.1973, c. 44; St. 1973, c. 180; St.1973, c. 607, §§ 2, 3; St.1975, c. 706, § 137; St.1977, c. 940, § 2.

BAKERIES AND BAKERY PRODUCTS

§ 2. Cleanliness and sanitary condition of bakery and equipment; shipping baskets

The floors, walls and ceilings of each bakery, the equipment used in the handling or preparation of bakery products or the ingredients thereof, and the wagons, boxes, baskets and other receptacles in which such products are transported, shall at all times be kept by the owner or operator of the bakery or by the distributor of such products in a clean and sanitary condition and free from dirt and dust, flies, insects and other contaminating matter. All show cases, shelves and other places where bakery products are sold shall at all times be kept by the dealer well covered, properly ventilated, adequately protected from dirt and dust, flies, insects and other contaminating matter, and in a sweet, clean and sanitary condition. Shipping baskets and other containers for transporting bakery products shall be kept clean and, whenever the property of a distributor or dealer, shall not be used for the shipment of other products to any person or concern.

§ 3. Storage, handling and transportation of bakery products

All bakery products and ingredients thereof shall be stored, handled, transported and kept so as to protect them from spoilage, contamination, disease and unwholesomeness. Boxes and other permanent receptacles or containers for the storing, receiving or handling of bakery products shall be so placed and constructed as to be beyond the reach of contamination from streets, alleys and sidewalks and from animals, and shall be kept clean and sanitary by the dealer. No other articles shall be placed therein in addition to said products. No person shall tamper with, injure or contaminate said boxes, receptacles or containers, nor shall any person other than the baker or dealer or his employees remove anything therefrom or place anything therein.

§ 4. Preparation of bakery products; labeling

There shall not be used in bakery products or in the ingredients thereof any ingredient or material, including water, which is spoiled or contaminated or which may render the product unwholesome, unfit for food or injurious to health, nor shall there be used in any bakery product any ingredient likely to deceive the consumer or which lessens the nutritive value of such product unless the product is plainly so labelled, branded or tagged, or has thereon a sign making plain to the purchaser or consumer the actual ingredients thereof; provided, that in the case of unwrapped bread to be sold by the loaf such labelling, branding or tagging shall be placed upon the label required under section eight, showing the name of the manufacturer and the net weight of the loaf. Said ingredients and the sale and offering for sale of said products shall otherwise comply with sections one hundred and eighty-six to one hundred and ninety-five, inclusive.

§ 5. Return of bakery products; movement of bakery products to consumer; exceptions

Except as provided in section six, no bakery products shall be returned from any consumer or other purchaser to the dealer or baker, nor from any dealer to the baker, nor shall any dealer or baker directly or indirectly accept any returns from or make any exchange of bakery products with any person. All such products shall be kept moving to the consumer without unreasonable delay and without any practice whatsoever which may disseminate contagion or disease among or inflict fraud upon consumers, or disseminate "rope", so called, or other infection in bakeries, or cause waste in the food supply; provided, that this section, except in so far as may be necessary to prevent such waste, shall not apply to crackers or other bakery products which are packed at the place of production in cartons, cans, boxes or similar permanent containers, except paper or parchment wrappers used in wrapping loaves of bread, and which are so packed and sealed at such place as fully to insure the freshness and wholesomeness of such products and to protect them from contamination, adulteration and deterioration in the course of trade, and which remain in the original unbroken package as packed.

§ 6. Establishment and enforcement of rules relative to exemptions, standards and requirements

The department of public health may, by rule, establish such exemptions as may be necessary to facilitate the sale of any accumulated or unsold stocks of wholesome bakery products, and in other cases consistent with sections two to six, inclusive, and section nine I. The standards and requirements prescribed by sections two to six, inclusive, shall conform to rules and regulations adopted by the department of public health, and said sections and rules and regulations shall be enforced by said department and by local boards of health acting under the supervision of said department.

Amended by St.1937, c. 362, § 2.

§ 7. Weight of loaves

Except as provided in section eight, bread shall not be manufactured for sale, sold, or offered or exposed for sale otherwise than by weight, and shall be manufactured for sale, sold, or offered or exposed for sale only in units of one pound, one and one half pounds, or multiples of one pound. When multiple loaves are baked, each unit of the loaf shall conform to the weight required by this section. The weights herein specified shall mean net weights not more than twelve hours after baking, or not more than twelve hours after the sale and delivery of such loaves by the manufacturer or by his servant or agent. Such weights shall be determined by the average weight of not less than six loaves; provided, that such average weights shall be determined by the weight of at least twelve loaves whenever such number of loaves is available at the time and place of such weighing; and provided further, that bread found upon any premises occupied for the manufacture of bread for sale, or any bread found in the wagons, trucks, baskets, boxes, or other delivery vehicles or receptacles owned or controlled by the manufacturer of such bread, and being transported or delivered for sale, shall for the purposes of this section be deemed to have been baked within twelve hours unless such bread is marked, designated or segregated as stale bread, under regulations prescribed by the director of standards.

Amended by St.1941, c. 490, § 19; St.1968, c. 467, § 8.

§ 8. Special provisions as to rolls and certain bread; unit weights; inspection

Unit weights, as defined in the preceding section, shall not apply to rolls or to fancy bread weighing less than four ounces, nor to loaves bearing in plain position a plain statement of the weight of the loaf and the name and business address of the manufacturer thereof. Such information shall be stated in case of wrapped bread, upon the wrapper of each loaf; provided that, when cellophane or similar transparent wrappers are employed, the director of standards may authorize the placing of a statement of such information between such transparent wrapper and the top of the loaf in such manner that such statement may be easily read through the wrapper. In the case of unwrapped bread such information shall be stated upon a printed label not larger than one by one and three quarters inches nor smaller than one by one and one half inches. No label, attached to an unwrapped loaf, shall be larger than provided herein, nor shall any such label be affixed in any manner or with any gum or paste which is unsanitary or unwholesome. When an inspection of bread is made at any bakery by the director or any inspector of standards or sealer of weights and measures, the manufacturer of such bread, or his servants or agents, shall, upon request of the official making such inspection, inform him whether such bread is manufactured for sale in any of the standard unit weights prescribed by the preceding section and, if not so manufactured for sale in such standard unit weights, shall furnish such official with samples of the labels or wrappers intended to be used on all such loaves of other than standard unit weights.

Amended by St.1937, c. 53.

§ 9. Enforcement of rules and regulations; seizures; notice; hearing before director; appeals

The director of standards shall prescribe such rules and regulations as are necessary to enforce the two preceding sections, including reasonable tolerances or variations within which all weights shall be kept; provided, that such tolerances or variations shall not exceed one ounce per pound under the standard unit or marked weight. The said director, and under his direction the local sealers of weights and measures, shall cause this section to be enforced. They may seize without warrant any bread which they may deem necessary to be used as evidence of violation of law, giving a receipt therefor, and such bread shall be returned to the owner or forfeited as the court may direct. Before any prosecution is begun under this section by any inspector of standards, the parties concerned shall be notified and given an opportunity to be heard before the director. Before any prosecution is begun under this section by any sealer or deputy sealer of weights and measures, the parties concerned shall be notified and given an opportunity to be heard before the sealer and shall have the right of appeal to the director of standards; provided, that such appeal is filed with said director in writing within five days from the finding of the local sealer. When such appeal has been entered no prosecution shall be begun until the charges have been reviewed by said director.

Amended by St.1939, c. 261, § 6; St.1968, c. 467, § 9.

§ 9A. Construction of bakery rooms; furniture and utensils

Every room used for the manufacture of flour or meal food products shall, if required by the board of health, have an impermeable floor constructed of cement or tiles laid in cement, and an additional floor of wood properly saturated with linseed oil. The walls and ceiling of such room shall be plastered or wainscoted, and, if required by the board of health, shall be whitewashed at least once in three months. The furniture and utensils therein shall be so arranged that they and the floor may at all times be kept clean and in good sanitary condition.

Added by St.1937, c. 362, § 3.

§ 9B. Sleeping places

The sleeping places for persons employed in a bakery shall be separate from the rooms where flour or meal food products are manufactured or stored.

Added by St.1937, c. 362, § 3.

§ 9C. Notice requiring alterations

The owner, agent or lessee of any property affected by section nine A shall, within sixty days after service of written notice requiring any alterations to be made in such property, comply therewith. Such notice may be served upon such owner, agent or lessee personally or by mail directed to his last known address.

Added by St.1937, c. 362, § 3.

§ 9D. Regulations of boards of health; posting

Except as provided in section nine F, boards of health may make such further regulations as the public health may require, and shall cause such regulations, together with sections nine A to nine E, inclusive, to be printed and posted in all such bakeries and places of business.

Added by St.1937, c. 362, § 3.

§ 9E. Penalties for violation of sections 9A to 9C

Whoever violates any provision of sections nine A to nine C, inclusive, or refuses to comply with any requirement of the board of health authorized therein or in the preceding section shall be punished for a first offence by a fine of not less than twenty nor more than fifty dollars; for the second offence by a fine of not less than fifty nor more than one hundred dollars or by imprisonment for not more than ten days; and for any subsequent offence by a fine of not less than two hundred and fifty dollars or by imprisonment for not more than one month, or both.

Added by St.1937, c. 362, § 3.

§ 9F. Rules and regulations of department of public health

The department of public health may make rules and regulations to carry out sections nine G to nine M, inclusive. Said sections and the rules and regulations shall be enforced by said department and by the local boards of health acting under the supervision of said department; provided, that the provisions of sections nine G and nine H relating to the health of employees shall be enforced by the department of labor and industries in accordance with such rules and regulations as it may prescribe. Sections nine G, nine H, nine J and nine M shall not apply to retail stores where bakery products are sold but not produced.

Added by St.1937, c. 362, § 3.

§ 9G. Sanitary requirements of bakeries

Every bakery shall be constructed, drained, lighted, ventilated and maintained in a clean and sanitary condition, and when and where necessary screened against flies; shall have plumbing and drainage facilities, together with suitable wash basins, wash sinks and toilets or water closets, which shall be kept in a clean and sanitary condition. The said toilets or water closets shall be in rooms having no direct connection with any room in which bakery products or ingredients are prepared, stored, handled or displayed.

Added by St.1937, c. 362, § 3.

§ 9H. Dressing rooms

In connection with every bakery suitable rooms shall be provided for the changing and hanging of the wearing apparel of the workers or employees, which shall be separate and apart from the work, storage and sales rooms, and shall be kept in a clean and sanitary condition.

Added by St.1937, c. 362, § 3.

§ 9*I*. Sitting or lounging on tables and other equipment; animals or fowls

No person shall sit, lie or lounge or be permitted to sit, lie or lounge upon any of the tables, shelves, boxes or other equipment or accessories used in connection with the production, preparation, packing, storing, display or sale of bakery products. No animals or fowls shall be kept in or permitted to enter any building or part thereof used for such production, preparation, packing, storing, display or sale.

Added by St.1937, c. 362, § 3.

§ 9J. Sanitary regulations for bakery employees; facilities

Before beginning the work of preparing, mixing or handling any ingredients used in the production of bakery products, every person engaged in such work shall wash the hands and arms, and, after using toilets or water closets, shall wash the hands and arms thoroughly and then rinse in clean water; and for this purpose the owner or operator of the bakery shall provide sufficient facilities.

Added by St.1937, c. 362, § 3.

§ 9K. Inspection of bakeries; notice to owner, etc., of failure to comply with law; remedy

If, after inspection, it is found that a bakery is not constructed, maintained, operated or the distribution of its products not conducted in accordance with sections two to six, inclusive, and sections nine F to nine J, inclusive, written notice shall be given to the owner or manager, stating the delinquency, and fixing a reasonable time within which the same shall be remedied and for hearing any party in interest.

Added by St.1937, c. 362, § 3.

§ 9L. Closing of bakery; hearing; appeal

If a bakery is unfit for the production or handling of food or dangerous to the health of its employees, the department of public health or local board may order it closed; provided, that any person aggrieved may be heard before said department or board, and may also appeal before or after the execution of the order, but within thirty days after its issue, to the superior court.

Added by St.1937, c. 362, § 3.

§ 9M. Approval of building plans and equipment; permits

No new bakeries shall be established unless the building plans and equipment proposed to be used have been approved by the local board of health. The board shall refuse a permit for such bakery if the building and equipment do not comply with sections two to six, inclusive, and sections nine F to nine J, inclusive, and rules and regulations made thereunder; provided, that any party in interest may appeal to the department of public health or to the superior court. Said department or court may affirm, reject or modify the findings of the board, and said board shall thereupon proceed in accordance with the order of the court or department.

Added by St.1937, c. 362, § 3.

§ 10. Penalty

Whoever violates any provision of sections two to nine, inclusive, or sections nine F to nine M, inclusive, or of any rule or regulation adopted thereunder, or whoever fails or refuses to comply with any request for information made under authority of said sections, shall be punished by a fine of not more than one hundred dollars.

Amended by St.1937, c. 362, § 4.

NON-ALCOHOLIC BEVERAGES

§ 10A. Permit to manufacture, bottle, sell, deliver, etc.

No person shall engage within the commonwealth in the business of manufacturing or bottling carbonated non-alcoholic beverages, soda waters, mineral or spring waters without a permit so to do from the board of health of the town where his plant is or is to be located, and no person engaged without the commonwealth in said business shall sell any such beverage within the commonwealth without a permit from the state department of public health, and no person shall sell or exchange, deliver, advertise, or offer or expose for sale or exchange, or attempt to deliver, or have in his possession with intent so to do, any such beverage unless the manufacturer and bottler thereof is the holder of a permit issued under authority of section ten B and then in full force.

Added by St.1935, c. 441.

§ 10B. Granting permits; expiration; renewals; fees

Local boards of health may grant permits to engage within their respective municipalities in the business of manufacturing or bottling of beverages specified in the preceding section, and the state department of public health may grant permits to the owners of plants for the manufacture or bottling of such beverages located without the commonwealth to sell such beverages within the commonwealth. Such a permit granted by said department shall apply only to one such plant and shall be valid throughout the commonwealth. Each permit granted under this section shall expire one year from the date of its issue. The fee for each such permit and for each annual renewal thereof shall be twenty dollars. Each local board of health shall pay to the state department of public health, for the use of the commonwealth, one half of the fee collected for each permit granted by it hereunder and shall send to said department a copy of each such permit so granted.

Added by St.1935, c. 441.

§ 10C. Examination of licensed premises; revocation of permits

The premises of any person granted a permit under section ten B shall, from time to time, be examined by the state department of public health and, if granted by the local board of health, by the board which granted it, and if such premises or the equipment used therein in connection with the business of such person is found to be in an unsanitary condition, or in violation of any provision of the rules and regulations made under section ten E, such permit may be revoked by said department or by the local board of health which granted it, as the case may be, after a hearing, ten days' written notice of which shall be given to such person.

Added by St.1935, c. 441.

§ 10D. Storage, handling and transportation of ingredients

All materials used in the manufacture of beverages specified in section ten A shall be stored, handled, transported and kept in such a manner as to protect them from spoilage, contamination and unwholesomeness. No ingredient or material, including water, shall be used in the manufacture or bottling of any such beverage which is spoiled or contaminated, or which may render the product unwholesome, unfit for food, or injurious to health. Persons granted permits under section ten B shall comply with sections one hundred and eighty-six to one hundred and ninety-six, inclusive.

Added by St.1935, c. 441.

§ 10E. Rules and regulations

The state department of public health and local boards of health may make rules and regulations to carry out the four preceding sections.

Added by St.1935, c. 441.

§ 10F. Penalties

Whoever violates any provision of sections ten A to ten E, inclusive, or of any rule or regulation made thereunder, shall be punished for a first offence by a fine of not more than one hundred dollars and for a subsequent offence by a fine of not more than five hundred dollars.

Added by St.1935, c. 441. Amended by St.1941, c. 119.

§ 10G. Application of sections 10A to 10F

The provisions of sections ten A to ten F, inclusive, shall not apply to persons registered under sections thirty-seven to forty, inclusive, of chapter one hundred and twelve.

Added by St.1935, c. 441.

ENRICHMENT OF BREAD AND FLOUR

§ 10H. Enriched bread and flour; manufacture and sale; purchase of unenriched flour

No person shall manufacture, bake or compound for the purposes of sale, or sell, offer for sale or have in possession with intent to sell in this commonwealth for human consumption, any white bread or rolls unless such bread or rolls conform to the definition of "enriched bread" as set forth in section one; and no person shall sell or offer for sale or deliver to any person other than to a wholesale distributor of such flour any flour for human consumption unless such flour conforms to the definition of "enriched flour" as set forth in section one; provided, that a manufacturer or wholesale distributor of flour may, upon the written request of a commercial manufacturer or baker of bread or rolls, and in accordance with the regulations of the department of public health, sell and deliver to such manufacturer or baker unenriched flour. Such baker or manufacturer electing to purchase unenriched flour for use in the manufacture of white bread or rolls shall furnish to the department of public health information pertaining to the source of supply of such flour, the quantities purchased, and the method of compliance with the enrichment requirements of this chapter as to white bread and rolls of his manufacture, in accordance with the regulations of said department.

Added by St.1948, c. 444, § 2.

§ 10*I*. Powers of department of public health; enforcement of rules and regulations; examinations and investigations

The department of public health shall enforce the provisions of sections ten H and ten K, inclusive, and shall from time to time make, amend or rescind rules and regulations for the enforcement thereof. Said rules and regulations shall include standards and tolerances of enrichment, and shall specify the quantities of the enriching ingredients necessary for compliance with the definitions of "enriched bread" and "enriched flour", respectively, as set forth in section one, consistent with law and conforming to the standards and tolerances, if any, adopted under the provisions of the federal food, drug and cosmetic act for the enforcement of federal law. Said rules and regulations with respect to labeling requirements as set forth in section ten J shall conform to the labeling requirements, if any, adopted for the enforcement of federal law.

The department of public health and the inspectors appointed under the provisions of chapter one hundred and eleven, section nine, may conduct examinations and investigations and may take samples of flour, white bread or rolls for analysis to determine compliance with the provisions of sections ten H to ten J, inclusive. Said inspectors may enter at any reasonable time any factory, mill, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof for the purpose of inspection and investigation for the enforcement of these sections; provided, that nothing in this paragraph shall be deemed to authorize any interference with interstate commerce.

Added by St.1948, c. 444, § 2.

§ 10J. Labeling; application

No person shall sell or offer for sale or have in possession with intent to sell in this commonwealth for human consumption any flour or wrapped white bread or rolls which meet the requirements of section one and section ten H unless such flour or bread or rolls are labeled with respect to enrichment as provided and set forth in the regulations of said department; provided, that this section shall not apply to white bread or rolls which are sold directly to the consumer by the manufacturer thereof.

Added by St.1948, c. 444, § 2.

§ 10K. Penalties

Whoever violates any provision of sections ten H to ten J, inclusive, or any rule or regulation of the department of public health promulgated thereunder shall be punished by a fine of not more than one hundred dollars for the first offence or by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not more than three months, or both, for each subsequent offence. The act, omission or failure of an agent or employee shall be deemed to be the act, omission or failure of the person referred to in sections ten H to ten K, inclusive, as defined in section one.

Added by St.1948, c. 444, § 2.

BAKING POWDER

§ 11. Labeling regulated; penalty

Whoever manufactures for sale or offers or exposes for sale or sells any baking powder or mixture or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of each box, can or package containing such baking powder or like mixture or compound, a label, distinctly printed in brevier gothic capital letters in the English language, containing the name and residence of the manufacturer and the ingredients of the baking powder, mixture or compound. Whoever violates any provision of this section shall be punished by a fine of not less than ten dollars nor more than one hundred dollars.

MILK AND CREAM

§ 12. Milk and cream, definitions, standards; rules

The term "milk" shall mean the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. The Massachusetts legal minimum standard for milk that is in final package form for beverage use shall be milk which, upon analysis, is shown to contain not less than eight and one-quarter per cent milk solids not fat and three and one-quarter per cent milkfat. Milk may be adjusted by separating part of the milkfat therefrom, or by adding cream thereto.

The term "cream" shall mean the liquid milk product high in fat separated from milk. The Massachusetts legal minimum standard for cream shall be cream which, upon analysis, is shown to contain not less than eighteen per cent milkfat. Cream may be adjusted by adding thereto milk, skim milk and such other milk products as the commissioner of public health may authorize by rule or regulation as hereinafter provided.

The commissioner of public health shall, subject to the provisions of chapter thirty A, adopt and promulgate rules and regulations establishing other legal standards as well as labeling requirements and sanitary standards for milk, cream and products thereof, including foods containing such ingredients, as sold or offered for sale in final package form, and may, in like manner and from time to time, amend, modify or repeal the same. Such rules and regulations shall be consistent with all applicable regulations effective from time to time pursuant to issuance by the Food and Drug Administration, Public Health Service, United States Department of Health, Education and Welfare, or any successor agency with like regulatory powers; provided, that requirement by said commissioner of more stringent bacterial and temperature standards shall not be precluded; and provided, further, that said commissioner may modify the application of said federal regulations to such degree as he may determine to be appropriate where only intrastate commerce in such products is involved. No product standard which has been established hereunder shall be subject separately to the provisions of section one hundred and ninety-two. Any person who violates any rule or regulation duly adopted and promulgated by said commissioner pursuant to this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars for each offence.

Added by St.1932, c. 305, § 3. Amended by St.1941, c. 374; St.1946, c. 467; St.1965, c. 632, § 1; St.1977, c. 940, § 3.

§§ 12A, 12B. Repealed by St.1977, c. 940, § 4

§ 13. Rules for milk and raw milk products

The commissioner shall, subject to the provisions of chapter thirty A, adopt and promulgate rules and regulations governing the production, transportation, receiving, handling, storage, processing, distribution and sale of raw milk for pasteurization and raw products thereof being shipped or offered for shipment into or within the commonwealth, including all pertinent sanitary standards and uniform minimum requirements for the inspection of dairy farms, milk plants and receiving stations, wherever located, and pasteurization plants located outside the commonwealth, and may, in like manner and from time to time, amend, modify or repeal the same. Such rules and regulations shall be consistent with applicable provisions of the Grade "A" Pasteurized Milk Ordinance and related publications of the Food and Drug Administration, Public Health Service, United States Department of Health, Education and Welfare, or any successor agency with like regulatory powers; provided, that requirement by the commissioner of more stringent bacterial and temperature standards shall not be precluded. Any person who violates any rule or regulation duly adopted and promulgated pursuant to this section shall be subject to a fine of not less than twenty-five nor more than one hundred dollars for each offence.

Added by St.1933, c. 263, § 1. Amended by St.1965, c. 104, § 1; St.1977, c. 940, § 5.

§ 13A. Repealed by St.1965, c. 104, § 2

§ 13B. State in which milk produced; statement on package

Any person selling milk graded as described in the rules and regulations adopted and approved under section twelve, or amended from time to time under authority thereof, in addition to such labelling as may be required, may state upon the package in which such milk is contained the state wherein such milk was produced; provided that all the milk contained in such package so labelled was produced exclusively in one state.

Added by St.1933, c. 263, § 1. Amended by St.1967, c. 82; St.1977, c. 940, § 6.

§ 13C. Sale of other than established grades of milk; penalty

Except as otherwise provided in section thirteen D, whoever sells or offers for sale any milk of any grade other than one established under authority of section twelve, or labels or sells or offers for sale any milk labelled in imitation of any grade so established, shall be punished by a fine of not more than fifty dollars.

Added by St.1933, c. 263, § 1. Amended by St.1967, c. 82; St.1977, c. 940, § 7.

§ 13D. Sale of milk not conforming to standard grade; penalty

Whoever himself or by his servant or agent sells, offers for sale, exchanges or delivers or has in his custody or possession with intent to sell, offer for sale, exchange or deliver any milk designated as any grade established under authority of section twelve, and not conforming to any standard adopted for such grade, or any milk in any city or town, the board of health whereof has adopted under authority of section thirteen E bacterial standards for any grade of milk, and not conforming to such standards, or in any way violates any rule or regulation adopted and approved, or amended, under said section twelve, shall be punished by a fine of not more than fifty dollars; provided, that for a subsequent offense within one year thereafter the punishment shall be by a fine of not less than one hundred nor more than two hundred dollars.

Added by St.1933, c. 263, § 1. Amended by St.1967, c. 82; St.1977, c. 940, § 8.

§ 13E. Bacterial standards; milk and cream sales and deliveries

Boards of health of cities and towns may adopt bacterial standards for milk which are numerically less but not greater than such standards as may be established therefor under sections twelve and thirteen. Rules and regulations promulgated under said sections shall not be construed to prevent the exercise by such boards of the powers and duties conferred and imposed upon them by section forty-one nor to prevent the sale of milk the production of which is regulated under authority of sections twenty to twenty-five, inclusive, of chapter one hundred and eighty. This section shall not be deemed to authorize the sale or delivery of milk, cream or products thereof which are not in compliance with applicable rules and regulations established pursuant to said sections twelve and thirteen.

Added by St.1933, c. 263, § 1. Amended by St.1967, c. 41; St.1977, c. 940, § 9.

§§ 14 to 15. Repealed by St.1933, c. 263, § 1

§ 16. Dairy farm; cream

For the purposes of sections sixteen to sixteen K, inclusive, the term "dairy farm" shall mean a place or premises where more than two cows are kept and a part or all of the milk produced thereof is sold or delivered for sale to any person. Said sections shall not apply to cream complying with the legal minimum standard for cream established by section twelve.

Added by St.1932, c. 305, § 3. Amended by St.1975, c. 706, § 138; St.1977, c. 940, § 10.

§ 16A. Certificate of registration required for sale of milk

Except as provided in section sixteen H, no person shall sell or offer or expose for sale milk produced on a dairy farm, for use or disposal elsewhere than on such farm, unless as to such farm a certificate of registration has been issued by the commissioner under section sixteen C and is in full force and effect; provided, that one who purchases such milk from a dealer registered under section sixteen F and sells or offers or exposes the same for sale shall not be deemed to have violated this section unless he knows or has reasonable ground to know that the same was not produced on a farm as to which such a certificate has been issued.

Added by St.1932, c. 305, § 3. Amended by St.1977, c. 940, § 11.

§ 16B. Applications for registration of dairy farms

Applications for the registration of dairy farms under section sixteen C shall be made upon blanks furnished by the commissioner and shall contain, in addition to such other information as may be required by the commissioner, a statement of the name, place of residence and business address of the applicant, the amount of milk produced on his dairy farm during the calendar month last preceding the date of application, the number of dairy cows more than two years of age and the number of heifers less than two years of age kept on said dairy farm during said month, the names and business addresses of dealers, distributors and wholesale purchasers who receive milk from said dairy farm, together with a statement of the estimated amount of milk to be supplied each dealer, distributor and wholesale purchaser during such period as may be designated by the commissioner. Every statement shall be verified by oath or written declaration that it is made under the penalties of perjury.

Added by St.1932, c. 305, § 3. Amended by St.1977, c. 940, § 12.

§ 16C. Issuance and renewal of certificates; inspection, etc.

The commissioner may issue a certificate of registration for a dairy farm which, upon inspection made by him within thirty days prior to the date of issuance of such certificate, clearly indicates satisfactory compliance with the requirements established pursuant to section thirteen for the approval of dairy farms. The certificates of registration for any given registration year shall be plainly distinguishable by color from those issued during immediately preceding years. Each dairy farm registered by the commissioner shall receive without cost a numbered certificate of registration which shall, while in effect, be posted in a conspicuous place at all times on said farm. Each certificate of registration shall expire on the following June thirtieth, if for a farm located within the commonwealth, and on December thirty-first, if for a farm located without the commonwealth, and an annual application for renewal thereof shall be made to the commissioner not later than the preceding May thirty-first in the first instance, and not later than the preceding November thirtieth, in the second instance, on forms furnished by the commissioner. If a certificate of registration is lost, a duplicate copy may be obtained from the commissioner upon written application and at a cost of fifty cents each. The commissioner may also, from time to time, renew a certificate of registration; provided, that he has determined that continuing compliance is being maintained with requirements established pursuant to section thirteen for the approval of dairy farms. The commissioner may accept, as a basis for the issuance or renewal of certificates of registration, the inspection reports of milk inspectors within the commonwealth with respect to farms within or without the commonwealth which have been inspected by them; provided, that such reports certify that such farms maintain compliance with said requirements. The commissioner may accept, as a basis for the renewal of certificates of registration for farms located outside the commonwealth, inspection reports made by the duly authorized regulatory agency of another state with respect to farms which are located in said state; provided that said state agency:

(*a*) is certified by the Food and Drug Administration, Public Health Service, United States Department of Health, Education and Welfare; and

(*b*) certifies with respect to each such report that the farm involved was, upon inspection by said state agency, in compliance with the requirements of said other state for approval of dairy farms; and provided, further, that said state agency has first stipulated in writing to the commissioner that it shall similarly accept inspection reports made by the commissioner with respect to farms located within the commonwealth and approved by him for the issuance and renewal of certificates of registration or like authorization under a dairy farm inspection program of such state; and

(*c*) accepts the right of the commissioner, based upon reasonable information alleging violation of the rules and regulations adopted pursuant to said section thirteen by a dairy farm located outside the commonwealth to assure correction of such violation by the duly authorized regulatory agency of the state involved; provided, that if the violations are not so corrected within a reasonable time, an inspection of the dairy farm for such purpose may be made by the commissioner.

Added by St.1932, c. 305, § 3. Amended by St.1941, c. 374; St.1946, c. 467; St.1965, c. 632, § 1; St.1977, c. 940, § 13.

§ 16D. Refusal, revocation or suspension of certificate

A certificate of registration for any dairy farm may be refused, or, if issued, may be suspended or revoked by the commissioner for failure to maintain compliance with the rules and regulations established pursuant to section thirteen; provided, that the commissioner may, in his discretion, allow the parties concerned a period of not more than thirty days in which to achieve such compliance; and provided, further, that, if compliance is not so achieved, the operator of the dairy farm involved shall be entitled to a hearing before the commissioner, or a person designated by him, prior to the final refusal, suspension or revocation of such certificate, such hearing to be held after reasonable notice specifying the day, hour and place thereof and accompanied by a statement of the alleged failure to comply, or the reasons for such refusal, suspension or revocation.

A certificate of registration which has been suspended shall be plainly stamped:—"Suspended until (date)"; and the operator of the dairy farm involved may make written application to the commissioner for reinspection at the expiration of the period of suspension. A certificate of registration which has been revoked shall be plainly stamped:—"Revoked"; and the operator of the dairy farm involved may make written application to the commissioner for reinspection only after a period of one year from the date of revocation has elapsed. Immediate notice of suspension or revocation of a certificate of registration shall be given by the commissioner to each dealer, receiving station or plant handling milk produced on the dairy farm involved, and to the board of health of each city or town where such milk is sold, offered or exposed for sale. In case of emergency, directly and immediately threatening the public, the commissioner of public health may suspend a certificate of registration, and shall notify the commissioner forthwith of any such suspension. The provisions of this section, when pertinent, shall apply to temporary certificates of registration issued under sections sixteen G and sixteen H.

Added by St.1932, c. 305, § 3; amended by St.1965, c. 632, § 2; St.1977, c. 940, § 14.

§ 16E. Monthly statements

Producers of milk whose dairy farms are registered hereunder shall submit upon a form furnished by the commissioner at such other times as he may request a complete statement for any one calendar month, the same to be made in accordance with the provisions and requirements of section sixteen B.

Added by St.1932, c. 305, § 3. Amended by St.1977, c. 940, § 15.

§ 16F. Registration of dealers

Each person, not a producer of milk, whose principal business is the sale at wholesale or retail of milk, shall, before commencing to transact such business, register as a dealer with the commissioner, and shall thereafter annually so register during the month of June, and upon every such registration shall state the address of each of his places of business, the names and addresses of producers, milk plants, receiving stations, or pasteurization plants supplying him the milk, with the number of quarts of milk supplied by each producer or from each such other source during the last calendar month preceding registration. No such person so registered shall buy or exchange milk from or through a broker or jobber or other person acting as an agent in the sale or exchange of milk, unless such broker, jobber, or agent also shall have registered with the commissioner at the time specified above and shall have stated the address of each of his places of business, the names and addresses of all sources of milk supply for which he has acted during the last twelve calendar months preceding such registration, and shall have granted the commissioner or his representative free access to all books of record in so far as they may pertain to volumes, dates, points of origin and points of delivery of milk. The director may require each such person, broker, jobber, or agent to prepare and submit to him, upon a form furnished by him therefor, a further statement of similar information for any one calendar month. Every statement shall be verified by oath or written declaration that it is made under the penalties of perjury. Registrations made under this section shall expire on the following June thirtieth, and applications for renewals thereof shall be made on forms furnished by the commissioner.

Added by St.1932, c. 305, § 3. Amended by St.1960, c. 687; St.1977, c. 940, § 16.

§ 16G. Temporary certificates

The commissioner may issue a temporary certificate of registration, plainly stamped:—"Temporary", for any dairy farm already registered under section sixteen C, pending an inspection within ninety days of the date of issue and such consequent action as may be necessary relative to the actual renewal of the certificate in question.

Added by St.1932, c. 305, § 3. Amended by St.1965, c. 632, § 3; St.1977, c. 940, § 17.

§ 16H. Temporary receipt of milk from unregistered dairy farms

Whenever the quantity of fresh milk available from registered dairy farms is, for each of three consecutive months, less than one hundred and thirty per cent of the quantity disposed of by licensed milk dealers as fluid milk within the commonwealth, the commissioner shall have the authority to approve the temporary receipt, by any licensed milk dealer applying therefor, of milk produced on unregistered dairy farms in such areas as he may approve; provided, that such milk shall not otherwise be exempted from compliance with the rules and regulations established pursuant to section thirteen; and provided, further, that the commissioner may authorize the inspection and registration of such farms under the provisions of section sixteen C as may be necessary to assure a continued supply of fresh milk in the commonwealth at a level which shall not be less than one hundred and thirty per cent of the quantity of fluid milk disposed of within the commonwealth. Nothing in this section shall be construed as preventing the commissioner, for reasons involving the public health, from authorizing the temporary receipt from unregistered farms for such periods and in such volume as he may determine to be necessary.

Added by St.1932, c. 305, § 3. Amended by St.1964, c. 262; St.1977, c. 940, § 18.

§ 16*I*. Penalties

Any person violating any provision of sections sixteen to sixteen F, inclusive, shall for the first offence be punished by a fine of not more than one hundred dollars; and for any subsequent offence shall be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than three months, or both.

Added by St.1932, c. 305, § 3.

§ 16J. Rules for handling and sale of milk

Boards of health of cities and towns may establish, amend or repeal rules and regulations for the handling and sale of milk within said cities and towns; provided, that such rules and regulations shall be consistent with those established pursuant to sections twelve and thirteen.

Added by St.1977, c. 940, § 19. Amended by St.1977, c. 940, § 19.

§ 16K. Inspection and approval of milk plants and receiving stations, etc.; permits; expiration

The commissioner may inspect milk plants and receiving stations, wherever located, and pasteurization plants outside the commonwealth, shipping milk into or within the commonwealth and, if the same be found to be in compliance with all applicable rules and regulations adopted pursuant to section thirteen, may approve them and may issue a permit showing such approval. Every such permit shall expire on June thirtieth following its issue, and may be suspended or revoked for the failure of the establishment to which it was issued to comply with rules and regulations relating thereto or for a violation, by such establishment, of any law relating to milk intended for sale within the commonwealth. Upon the application of any city or town, the commissioner may delegate to the inspector of milk thereof his authority to inspect milk plants, receiving stations and pasteurization plants from which milk is shipped to such city or town, and submit inspection reports to him, which reports shall form the basis of his issuance of such permits. A pasteurization plant located outside the commonwealth shall pay a fee of ten dollars for such a permit and each renewal thereof, but permits and renewals thereof shall be issued to milk plants and receiving stations without cost. If any city or town to the milk inspector of which the power of inspection is delegated under any provision of this section fails to enforce rules and regulations adopted pursuant to said section thirteen then in force, said delegation of authority shall forthwith terminate.

Renewal by the commissioner of any permit issued under the provisions of this section may be based upon the inspection reports made by the duly authorized agency of the state in which such permittee is located provided, that the commissioner shall have the authority to evaluate, by random inspection or other investigation, the adequacy of such inspection and to suspend or revoke a permit determined to have been so renewed on the basis of inadequate or otherwise unsatisfactory inspection by said agency.

Added by St.1946, c. 542. Amended by St.1947, c. 379; St.1975, c. 706, § 139; St.1977, c. 940, § 19.

§ 16L. Sale of milk from plant or station not inspected and approved or to which permit not issued

Whoever sells, exchanges or delivers, or has in his possession with intent to sell, exchange or deliver, milk shipped into the commonwealth from a milk plant, receiving station or pasteurization plant which has not been inspected and approved, or to which a permit has not been issued as provided in section sixteen K, shall be punished for a first offence by a fine of not less than five hundred nor more than one thousand dollars, for a second offence by a fine of not less than one thousand nor more than five thousand dollars, and for a subsequent offence by a fine of five thousand dollars and by imprisonment for not less than six months. This section shall not apply to any sale, exchange or delivery of milk brought into the commonwealth under a temporary permit issued under section sixteen H.

Added by St.1946, c. 542. Amended by St.1967, c. 136.

§ 17. Repealed by St.1977, c. 940, § 20

§ 17A. Combinations of fats or oils with milk, cream or skimmed milk; penalty

No person himself or by his servant or agent shall, for the purposes of sale or exchange, add any fat or oil other than milk fat to, or blend or compound the same with, any milk, cream or skimmed milk, whether or not condensed, evaporated, concentrated, powdered, dried or desiccated, so that the resulting product is in imitation or semblance of milk, cream or skimmed milk whether or not condensed, evaporated, concentrated, powdered, dried or disiccated, nor shall any person himself or by his servant or agent sell, exchange or deliver, or have in possession with intent to sell, exchange or deliver, or expose or offer for sale or exchange, any milk, cream or skimmed milk in any of the aforesaid forms to which has been so added or with which has been so blended or compounded any fat or oil other than milk fat. No person himself or by his servant or agent shall sell, exchange or deliver, or have in his possession with intent to sell, exchange or deliver, or expose, or offer for sale or exchange, as pure milk, any milk, cream, or skimmed milk in any of the aforesaid forms to which has been added or with which has been blended or compounded any milk fat. Whoever violates any provision of this section shall be punished by the penalties prescribed by section twenty-four.

Amended by St.1933, c. 124.

§ 18. Sale of milk of less fat content than stated on label, etc.; penalty

Whoever himself or by his servant or agent sells, exposes for sale, or has in his custody or possession with intent to sell, milk labelled as to its fat content which, upon analysis, is found to contain less milk fat than is stated upon the label, cap or tag, and whoever himself or by his servant or agent sells, exposes for sale or exchange, or delivers milk not wholly produced in the commonwealth in containers bearing, upon a label, cap, tag, or otherwise, words indicating that such milk was produced in the commonwealth, and whoever in any manner represents that milk not wholly produced in the commonwealth was wholly produced therein, shall be punished for the first offence by a fine of not more than fifty dollars, for the second offence by a fine of not less than fifty nor more than one hundred dollars, and for a subsequent offence by a fine of not less than one hundred nor more than two hundred dollars.

Amended by St.1933, c. 263, § 2.

§ 19. Repealed by St.1977, c. 940, § 20

§ 20. Sale of below standard milk; penalty

Whoever himself or by his servant or agent sells, exchanges or delivers, or has in his custody or possession with intent so to do, milk not conforming to the Massachusetts standard shall be punished for the first offence by a fine of not more than fifty dollars, for the second offence by a fine of not less than one hundred nor more than two hundred dollars, and for a subsequent offence by a fine of not less than one hundred nor more than two hundred dollars or by imprisonment for not more than three months; provided, that it shall not constitute a violation of this section for a producer of milk operating a dairy farm registered under section sixteen C to sell, or deliver in exchange or otherwise, to a dealer registered under section sixteen F natural cow's milk produced on such dairy farm and not conforming to the state standard, or for such a producer to have in his custody or possession any such milk with intent to sell, or deliver in exchange or otherwise, such milk to such a dealer, or for such a dealer to have in his custody or possession such milk, obtained as aforesaid from such a producer, with intent to blend such milk with other natural cow's milk for the purpose of making the blend conform to said standard.

Amended by St.1933, c. 212.

§ 21. Labeling of cream; sale of cream not conforming to standard; penalties

No person, himself or by his agent, shall sell, expose for sale, or have in his custody or possession with intent to sell, cream not bearing, upon a label, cap or tag in legible bold-faced letters of not less than twelve point plain gothic type, a statement of one of the following designations conforming to the legal standard for the particular grade or kind as set forth in section twelve: "Light Cream", "Medium Cream", "Heavy Cream", "Extra Heavy Cream", "Ungraded Cream", or "Cream" together with the percentage of milk fat contained therein which shall be not less than sixteen per cent. Whoever, himself or by his agent, sells, exposes for sale, or has in his custody or possession with intent to sell, cream not bearing a designation as hereinbefore required, or cream bearing such a designation and not conforming to the legal standard set forth in said section twelve for the grade or kind so designated, shall for the first offence be punished by a fine of not more than fifty dollars, for the second offence by a fine of not less than fifty nor more than one hundred dollars, and for a subsequent offence by a fine of not less than one hundred nor more than two hundred dollars.

§§ 22 to 24. Repealed by St.1977, c. 940, § 20

§ 25. Accuracy of measuring utensils or devices used in determining component content of milk or cream for inspection or payment; prior testing and verification; fee

No person shall use any bottle, pipette, graduate or any other measuring utensil or device in the determination, by any testing method approved under section twenty-seven, of milk-fat or other component content of milk or cream for the purpose of inspection or as a basis for payment in buying or selling until such utensil or device has been tested and verified for accuracy by or under supervision of the director. Prior to use in any such determination, each such utensil or device shall be submitted to the director or his agent for the required testing and verification and shall, subsequent to test, be clearly and permanently marked as accurate or inaccurate, and none bearing the latter designation shall be used in any such determination. A fee not to exceed the actual cost of such testing and verification shall be payable to the director.

Amended by St.1971, c. 1066, § 1.

§ 26. Annual inspection of testing equipment; seal; fee; condemnation; additional inspection cost

Mechanical or other equipment intended for use in any testing method approved under section twenty-seven for the determination of milk-fat or other component content of milk or cream for purposes of inspection or as a basis for payment in buying or selling shall be inspected for accuracy of operation prior to initial use in such determination and at least once in each year thereafter by the director or his agent and, if approved, shall be so identified by seal showing the date of inspection. The user or owner of such equipment shall pay to the director a fee not to exceed the actual cost of each such initial and subsequent annual inspection. The director or his agent may condemn any testing equipment which in his judgment, upon inspection, is not in condition to produce accurate results. Upon condemnation, no such equipment shall be used in such determination until it has been corrected to the satisfaction of the director or his agent and approved by him. The actual cost of any additional inspection necessary to such approval shall also be paid to the director.

Amended by St.1971, c. 1066, § 1.

§ 27. Testing method and equipment; approval; certificate of competency for operators; requirements; fee

No testing method shall be used for the determination of milk-fat or other component content of milk or cream for the purpose of inspection or as a basis for payment in buying or selling unless it has been jointly approved by the director and the director of milk control and duly regulated under the provisions of section twenty-nine A. No person shall operate any mechanical equipment for such determination unless he has first obtained from the director or his agent a certificate indicating that he is competent in such operation and has thereafter been licensed under the provisions of section twenty-eight. The fee for such a certificate of competency shall be set by and be payable to the director. The director shall establish such requirements with respect to the application for and granting of said certificates as he deems appropriate. A copy of each such certificate shall be furnished to the director of milk control.

Amended by St.1971, c. 1066, § 1.

§ 27A. Persons receiving raw milk at dairy farms; determination of payment; necessity of certificate of competency; requirements; fee

Except as provided in section twenty-eight A with respect to emergency licensing, no person in determining the basis for payment in buying or selling shall measure, sample or accept raw milk at a dairy farm for inclusion in a bulk tank truck unless he has first obtained from the director or his agent a certificate indicating that he is competent in such operations and thereafter has been licensed under the provisions of section twenty-eight A. The fee for such a certificate of competency shall be set by and be payable to the director. The director shall establish such requirements with respect to the application for and granting of said certificates as he deems appropriate. A copy of each such certificate shall be furnished to the director of milk control.

Added by St.1961, c. 561, § 1. Amended by St.1971, c. 1066, § 1.

§ 28. License to operate; issuance to persons certified under section 27; revocation or suspension; reinstatement; fees

The director of milk control or his agent shall, upon application on a form provided by him, issue a license to operate to any person holding a certificate of competency obtained as provided in section twenty-seven and dated within thirty days of the date of application. The license fee shall be three dollars payable to the director of milk control. The director of milk control may revoke or suspend such license at any time for violation of any of the provisions of sections twenty-five through thirty or of the rules and regulations made thereunder, and may reinstate such license upon his determination that the cause for revocation or suspension has been removed. An additional fee of three dollars shall be paid to the director of milk control for reinstatement of a license which has been revoked. Names of licensees and notice of any suspension, revocation or reinstatement shall be furnished to the director.

Amended by St.1971, c. 1066, § 1.

§ 28A. License to receive raw milk at dairy farms; issuance to persons certified under section 27A; temporary or emergency license; revocation or suspension; reinstatement; fees

The director of milk control or his agent shall, upon application on a form provided by him, issue a license to receive raw milk at dairy farms to any person holding a certificate of competency obtained as provided in section twenty-seven A and dated within thirty days of the date of application. He may also, without prior evidence of competency and upon application by telephone or otherwise, issue such a license on a temporary basis not to exceed thirty days, provided he deems such action to be required because of emergency conditions to assure the uninterrupted collection of raw milk from dairy farms. No temporary license shall be renewed or extended except upon submission by the licensee of a certificate of competency obtained as hereinabove provided. The license fee in either case shall be three dollars payable to the director of milk control. The director of milk control may at any time revoke or suspend a license issued under this section for violation of any of the provisions of sections twenty-five through thirty or of the rules and regulations made thereunder, and may reinstate such license upon his determination that the cause for revocation or suspension has been removed. An additional fee of three dollars shall be paid to the director of milk control for reinstatement of a license which has been revoked. Names of licensees and notice of any suspension, revocation or reinstatement shall be furnished to the director.

Added by St.1961, c. 561, § 2. Amended by St.1966, c. 128; St.1971, c. 1066, § 1.

§ 29. Continued supervision of licensed and certified persons; dissemination of technical information; additional evidence of competency; inspection; report of violations; amendment of rules and regulations

The director shall be responsible for timely dissemination of information to all persons licensed by him under prior provisions of earlier law or certified by him under the provisions of either section twenty-seven or section twenty-seven A with respect to technical developments and improved procedural methods pertinent to their operations and may, in his discretion, require additional evidence of competency for continued licensing or certification. He or his agent may enter upon any premises, including bulk tank trucks, where samples of milk or cream are taken, stored or tested in order to inspect any utensil, device or equipment used in making tests or to ascertain the continuing competency of any person so licensed or certified, and shall report to the director of milk control any violation observed by him of the provisions of sections twenty-five through twenty-eight A or of the rules and regulations issued under the provisions of section twenty-nine A. He shall also be represented at any hearing held as provided in section twenty-nine A and shall enter testimony thereat with respect to such proposals for amendment of rules and regulations as may be under consideration.

Amended by St.1971, c. 1066, § 1.

§ 29A. Rules and regulations governing tests for determining component content of milk or cream and procedures for receiving raw milk at dairy farms

The director of milk control shall, after reasonable notice to all interested parties and a hearing and subject to the approval of the milk control commission, prescribe, and may from time to time in like manner modify or amend, rules and regulations to govern the methods and frequency of making tests for determining the milk-fat or other component content of milk or cream for purposes of inspection or as a basis for payment in buying or selling and to govern the procedures for determining the proper basis for payment by the measuring, sampling and accepting of raw milk at dairy farms for inclusion in bulk tank trucks.

Amended by St.1933, c. 253; St.1946, c. 447, § 1; St.1971, c. 1066, § 1.

§ 30. Enforcement of sections 25 to 31; inspection; violations; prosecutions; application to educational and informational service to dairy farmers

The director of milk control and his agents shall enforce sections twenty-five through thirty-one, inclusive, and the rules and regulations made thereunder, and may prosecute or cause to be prosecuted any person violating any provision thereof. The director of milk control or his agents shall enter upon any premises, including bulk tank trucks, where samples of milk or cream are taken, stored or tested for the purpose of inspection or as a basis for payment in buying or selling in order to determine whether said sections, rules and regulations are being properly observed. Said sections, rules and regulations shall not be construed to apply to any person determining milk-fat or other component content of milk or cream solely in connection with an educational and informational service to dairy farmers, provided that the director or his agent shall, with respect to any such person, be responsible for carrying out the provisions of sections twenty-five and twenty-six and for issuing certificates of competency as provided in sections twenty-seven and twenty-seven A.

Amended by St.1933, c. 253; St.1946, c. 447, § 2; St.1961, c. 561, § 3; St.1971, c. 1066, § 1.

§ 31. Interference with directors or agents; violations of sections 25 to 30 or rules and regulations; penalty

Whoever hinders or obstructs the director or the director of milk control, or any agent of either said director, in the discharge of any authority or duty imposed upon him by any provision of sections twenty-five through thirty, whoever violates any provision of said sections, and whoever knowingly violates any provisions of the rules and regulations made thereunder, shall be punished by a fine of not less than twenty-five nor more than fifty dollars.

Amended by St.1933, c. 253; St.1946, c. 447, § 3; St.1971, c. 1066, § 1.

§ 32. Milk stations

The board of health of a city, and of a town of ten thousand or more inhabitants, when it deems it advisable for the public health, may establish one or more stations for the distribution of milk, either free of charge in cases of necessity, or at such charge and under such conditions, rules and regulations as it establishes; but this section shall not permit any such board to engage in a general milk business.

§ 33. Inspectors of milk and collectors of samples of milk

The board of health of a city shall, and the board of health or the selectmen acting as such board of a town may, appoint one or more inspectors of milk and one or more collectors of samples of milk, who shall have the powers, and perform the duties, conferred and imposed by law upon such inspectors and collectors, who shall be under the control of, and whose compensation shall be fixed by, the board appointing him or them; but no person whose business, in whole or in part, is the buying or selling of milk, or who is an officer, agent or employee of any person engaged in the sale thereof, shall be appointed as such inspector. Each person so appointed shall be sworn before entering upon his official duties and each such inspector shall publish a notice of his appointment for two successive weeks in a newspaper published in his town, if any; otherwise he shall post such notice in two or more public places therein. Such inspectors may be removed in cities in the manner provided in sections forty-one to forty-five, inclusive, of chapter thirty-one, and in towns at any time, by the appointing board.

Amended by St.1978, c. 393, § 32.

§ 34. Designation and employment of board members as collector

Any board mentioned in the preceding section may designate and employ any member of the board or any agent or employee thereof as a collector of samples of milk.

§ 35. Powers of inspectors and collectors; appointment; removal

Each inspector of milk shall enforce in his town the laws as to the milk supply, and shall make complaint for a violation of any provision of sections nineteen to twenty-eight, inclusive, thirty-three, thirty-eight to forty, inclusive, and forty-one A, upon the information of any person laying before him satisfactory evidence whereby to sustain such complaint. He shall keep an office and shall record, in books kept for the purpose, the name and place of business of each person engaged in the sale of milk within such town. Each inspector of milk or collector of samples of milk may enter each place where milk is produced, stored or kept for sale and each vehicle used for its conveyance, and take therefrom samples for analysis. Upon request made when any sample is taken, he shall seal and deliver to the owner or person from whose possession the milk is taken a portion of each sample, and a receipt therefor shall be given to him. Each inspector of milk shall cause each sample to be analyzed or otherwise satisfactorily tested, and shall record and preserve as evidence the results thereof; but no evidence of the result of such analysis or test shall be received if such inspector or collector refuses or neglects to seal and deliver, upon request as above provided, a portion of such sample to the owner or person from whose possession it is taken. This section shall not apply to milk in the course of interstate commerce.

Amended by St.1976, c. 136, § 1.

§ 36. Results of analysis sent to owner

An officer of the department of public health or of the division of dairying and animal husbandry of the department of food and agriculture, an inspector of milk or collector of samples of milk, or other officer of the commonwealth or of a city or town who obtains a sample of milk for analysis shall, within ten days after obtaining the result of the analysis, send it to the person from whom the sample was taken or to the person responsible for the condition of such milk.

Amended by St.1975, c. 706, § 140.

§ 37. Liability of producer of milk

No producer of milk shall be liable to prosecution for the reason that the milk produced by him is not of good standard quality unless such milk was taken upon his premises or while in his possession or under his control by an inspector of milk, collector of samples of milk or agent of the division of dairying and animal husbandry of the department of food and agriculture or of the department of public health, and a sealed sample thereof was given to such producer upon demand, nor unless he shall fail to bring the milk produced by him to the legal standard for milk solids and milk fat within twenty days after written notice that it is below said standard has been sent to him by the officer taking said sample. At any time after such period of twenty days has elapsed, any such officer may take a second sample, and if it is found to be below the legal standard for milk solids and milk fat prosecution may follow.

Amended by St.1975, c. 706, § 141.

§ 38. Connivance by or interference with inspector

An inspector of milk or a collector of samples of milk who wilfully connives at or assists in a violation of sections nineteen, twenty, twenty-three, thirty-nine, forty and one hundred and forty-six, or any person who hinders, obstructs or interferes with such an inspector or collector in the performance of his duty, shall, except as provided in section sixty, be punished by a fine of not less than one hundred nor more than three hundred dollars or by imprisonment for not less than one nor more than two months.

§ 39. Use of imitation or counterfeit seal

Whoever makes, causes to be made, uses or has in his possession, an imitation or counterfeit of a seal used by an inspector of milk, collector of samples of milk or other officer engaged in the inspection of milk, and whoever changes or tampers with a sample taken or sealed as provided in section thirty-five, shall be punished by a fine of one hundred dollars and by imprisonment for not less than three nor more than six months.

§ 40. License to sell milk; contents; display

No person, except a producer or dealer selling milk to other than consumers, or selling not more than twenty quarts per day to consumers, shall deliver, exchange, expose for sale or sell or have in his custody or possession with intent so to do any milk or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, the name and place of business. A license issued to a partnership or corporation shall be issued in the business name of said partnership or corporation and shall contain the names in full of the partners and managers of said partnership or officers of said corporation. The license shall, for the purposes of sections forty to forty-two, inclusive, be conclusive evidence of ownership and shall not be sold, assigned or transferred. No person, other than a producer selling milk or cream, or both, shall display the word "dairy" on any vehicle used by him or his authorized agent in the business of selling milk or cream, unless such person has a license, in full force and effect, issued under section forty-eight A. Whoever in such a town engages in the business of selling milk or cream from any vehicle for household deliveries shall display conspicuously on the outside of each vehicle so used the name and principal place of business of the licensee in Gothic letters not less than one and one-half inches in height. Whoever in such a town engages in the business of selling milk or cream in a store, booth, stand or market place shall have his license conspicuously posted therein.

Amended by St.1941, c. 298; St.1955, c. 757, § 4; St.1976, c. 136, § 2.

§ 41. License; fee; term, suspension or revocation; appeal; reinstatement; notice; list of dealers

An inspector of milk in any town, for the purposes mentioned in the preceding section and subject to the regulations established by the board of health of such town, may grant licenses to suitable persons, and shall receive for each license so granted a fee of two dollars for the use of such town, and all license fees collected by him shall be paid over monthly to the town treasurer. Such licenses shall remain in force until June first following, unless previously suspended or revoked. An inspector of milk may declare any license granted by him under this section suspended or forfeited upon a conviction of the licensee in any court of the commonwealth for violation of his license. If the applicant for a license fails to comply with any regulation of the board of health of the town where the application is made, a license may be refused until he has complied with such regulation; and a license granted under this section may be revoked at any time for failure to comply with any such regulation. If a license is so refused or revoked, an appeal may be taken to the department of public health, whose decision shall be final. Every inspector of milk shall annually during the month of June, and at any other time upon special request of the commissioner of agriculture, furnish to him a list of dealers holding licenses for the sale of milk, skimmed milk or cream who purchase the same directly from producers in the commonwealth. If any inspector revokes such a license or reinstates such a license previously revoked, he shall, within ten days after the effective date of such revocation or reinstatement, notify said commissioner in writing to that effect.

Amended by St.1972, c. 114; St.1976, c. 136, § 3.

§ 41A. Dealers selling to other than consumers; license

No dealer selling to other than consumers, except a dealer licensed under the provisions of sections forty and forty-one, shall deliver, exchange, expose for sale or sell or have in his custody or possession with intent so to do any milk or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, and the name and place of business. A license issued to a partnership or corporation shall be issued in the business name of said partnership or corporation and shall contain the names in full of the partners and managers of said partnership or officers of said corporation. Application for such license shall be made on or before March first of the license period beginning June first, following, or at any time later than March first in any year for the balance of the license period after the date of issue of the license. The inspector of milk in any town may grant such license. Such application shall be made upon a form furnished and prescribed by the commissioner of public health.

The inspector of milk upon the payment of a fee of two dollars shall issue to such applicant a license which shall remain in force and effect for a period of five years beginning June first following or the balance thereof as the case may be.

Added by St.1976, c. 136, § 4.

§ 42. Selling milk without license; penalty

Whoever violates any provision of section forty shall be punished for the first offence by a fine of not less than ten nor more than one hundred dollars, for the second offence by a fine of not less than fifty nor more than three hundred dollars, and for a subsequent offence by a fine of fifty dollars and by imprisonment for not less than one nor more than two months.

§ 42A. Definitions applicable to this section and sections 42B to 42J; licensing of buyers; application; bond or other security; fee

The following words, as used in this section and in sections forty-two B to forty-two J, inclusive, shall, unless the context otherwise requires, have the following meanings:

"Commissioner", the commissioner of food and agriculture.

"Cooperative association", a duly incorporated organization of dairy farmers which the commissioner determines to be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act", and to be engaged, by virtue of a membership agreement or contract in full force and effect, in making collective sales of, or marketing, milk or its products for producers.

"Pay period", the period in any month from the first to the fifteenth day, inclusive, or from the sixteenth to the final day inclusive.

"Producer", any person engaged in the commercial production of milk on a place or premises within the confines of the commonwealth, including, to the extent deemed necessary or advisable by the commissioner, a cooperative association which represents any such person in the marketing of his milk.

"Receive" or "receipt", the act of any person, licensed or required to be licensed under the provisions of chapter ninety-four A, by which raw milk is first accepted or caused to be accepted from a producer.

No person shall receive milk from producers unless licensed to do so by the commissioner. Application for such license shall be made on or before March the first in each year for the license year beginning June the first following, or at any time later than March the first in any year for the balance of the license year after the date of issue of the license, which date shall be at least two months subsequent to the filing of the application. Such application shall be made upon a form prescribed by the commissioner and shall contain a statement of such information as he may require to aid him in fixing the amount of the bond or other security hereinafter required. Such statement shall be made under the penalties of perjury by the applicant, if an individual, and, if the applicant is a corporation, by its president and treasurer. A license shall not be issued unless the applicant shall execute and file at the time of filing the application, or within such further time as the commissioner may allow, a bond or other security satisfactory to the commissioner or shall be relieved therefrom as provided in section forty-two E. The commissioner, if satisfied with the financial responsibility and good faith of the applicant and with the bond or other security filed with him, shall issue to such applicant, upon payment of a fee of five dollars, a license entitling the applicant to receive milk from producers for the license year or balance thereof as the case may be.

Added by St.1933, c. 338, § 2. Amended by St.1935, c. 126; St.1961, c. 95, § 1; St.1970, c. 690, § 1; St.1975, c. 706, § 142.

§ 42B. Bond; amount; form; condition; note, cash or collateral in lieu of bond

The bond required by the preceding section shall be payable to the commissioner and shall be in a sum fixed by him. Said sum shall be substantially equivalent to the total value, as determined by the commissioner, of milk received by the applicant from all producers during an average pay period in the three months immediately preceding the date of application for a license, plus ten per cent of such total value, or, if the applicant is not currently receiving milk from producers, shall be substantially equivalent to the total value, as estimated by the commissioner, of milk to be received from all producers in an average pay period during the term for which the license is to issue, plus ten per cent thereof. Such bond shall be in a form prescribed by the commissioner and shall be executed by the applicant and by a surety company authorized to do business in the commonwealth. It shall be upon the condition that the applicant, if granted a license, shall faithfully comply with all pertinent provisions of this chapter and shall promptly pay all amounts due or to become due to producers during the license period for which application is made. In lieu of such bond, the commissioner may accept a note of like amount payable to him, secured by a mortgage of real estate or by a deposit of cash or collateral with him. Any such mortgage, or note secured by cash or collateral, shall be upon the same condition as is herein provided for a bond. Any cash or collateral deposited under this section or under section forty-two D shall be deposited by the commissioner with the state treasurer, who shall hold the same subject to section forty-two C.

Added by St.1933, c. 338, § 2. Amended by St.1963, c. 129; St.1970, c. 690, § 1.

§ 42C. Default by licensee; notices; action on bond; payment of claims

Each producer shall notify the commissioner in writing of any default in the timely payment for milk on the part of a licensee, such notification to be made within ninety days after the date on which payment for milk is regularly due under the provisions of chapter ninety-four A, of orders, rules or regulations issued under the authority thereof, or of a federal milk marketing order effective in the commonwealth. Upon default by the licensee in any of the conditions of his bond or other security, if there is reason to believe that the licensee is in arrears in his payments to producers for milk received by him, the commissioner shall give notice to all producers so affected to file verified claims with him, and may, if he deems it advisable, fix a limit of time within which such claims shall be filed. The commissioner or his duly authorized assistant shall examine claims so filed and shall certify the amounts determined by him to be due thereon. Upon such default, the commissioner or his duly authorized assistant may bring such action as is deemed necessary upon any bond given under the two preceding sections, may foreclose any mortgage given thereunder and sell the mortgaged property and may sell any collateral deposited with him thereunder. He shall first apply the sum recovered in any such action, or the proceeds of the sale of any such mortgaged property or deposited collateral, or any cash deposited as security toward the payment of any claims of producers filed and certified under this section, and, if the amount thereof is more than sufficient to pay all such claims in full, shall pay any balance remaining, after deducting all expenses, to the licensee or his legal representative or surety or other person entitled thereto. In any action taken upon a bond or other security filed under the provisions of sections forty-two A and forty-two B, the certificate of the commissioner in determining the amounts due shall be prima facie evidence of the facts stated therein.

Added by St.1933, c. 338, § 2. Amended by St.1968, c. 751; St.1970, c. 690, § 1.

§ 42D. Insufficient bond or other security; notice to commissioner; statement of assets, liabilities and disbursements; additional security

If the business operation of any licensee is such that the total value of milk received by him from producers in any pay period exceeds the sum of his bond or other security filed under the provisions of sections forty-two A and forty-two B, he shall advise the commissioner thereof in writing not later than thirty days after the end of such pay period. The commissioner may from time to time require a licensee to file a statement of his assets, liabilities and disbursements covering a period to be prescribed by the commissioner, including the names and addresses of producers from whom the licensee receives milk and the amount due to each such producer. Such statement shall be made under the penalties of perjury by the licensee, if an individual, or, if the licensee is a corporation, by its president and treasurer. If it appears from such statement, or from facts otherwise ascertained by the commissioner, that the security afforded to producers by bond, note, mortgage or otherwise does not adequately protect them, the commissioner may require the licensee to give, immediately or within such time as the commissioner may fix, additional security in such sum as he shall determine; provided, however, that the total amount of security required of such licensee shall not thereby be made to exceed by more than twenty-five per cent the total value of milk received by the licensee from producers during any pay period in the three months immediately preceding.

Added by St.1933, c. 338, § 2. Amended by St.1970, c. 690, § 1.

§ 42E. Exemption from filing bond or security

If a licensee, or an applicant for a license, under section forty-two A is himself a producer and, in addition to his own production, receives from other producers not more than one hundred quarts of milk, and if the commissioner is satisfied from an investigation of the financial condition of the licensee or applicant that he is solvent and possessed of sufficient assets reasonably to assure compensation to his present and future creditors, the commissioner may, by an order filed in the department of agriculture, relieve such applicant or licensee from filing a bond or other security as hereinabove required. No bond or other security shall be required of a cooperative association receiving milk from producers who are also members, by virtue of a membership agreement or contract in full force and effect, of such cooperative association.

Added by St.1933, c. 338, § 2. Amended by St.1970, c. 690, § 1.

§ 42F. Records of transactions

To the extent and in such form as the commissioner may require, each person licensed under section forty-two A shall keep a record of his receipts from and payments to producers, and shall furnish to each such producer a statement of the quantity of milk received from him.

Added by St.1933, c. 338, § 2. Amended by St.1934, c. 180, § 1; St.1970, c. 690, § 1.

§ 42G. Investigation of financial standing and business conduct of applicant or licensee; information disclosed confidential

The commissioner or his duly authorized assistant may at any time investigate the financial standing and past business conduct of any person applying for or holding a license under section forty-two A, and in such investigation may examine the books of account or other documents or records of any such applicant or licensee, and may take testimony therein under oath; provided, however, that information, disclosed by such investigation and relating to the general business of any such applicant or licensee, but not pertinent to the purposes of sections forty-two A to forty-two J, inclusive, shall be treated by the commissioner as confidential.

Added by St.1933, c. 338, § 2. Amended by St.1970, c. 690, § 1.

§ 42H. Grounds for refusal to grant license or revocation

The commissioner may refuse to grant a license under section forty-two A, or may revoke such a license already granted, when he is satisfied of the existence of any of the following causes:

1. That a judgment has been obtained against the applicant or licensee by any producer and remains unsatisfied of record.

2. That the applicant or licensee has failed to make prompt settlements with producers from whom he has received or is receiving milk, or to make statements to producers as provided in section forty-two F.

3. That there has been a continued course of dealing of such nature as to satisfy the commissioner of the inability or unwillingness of the applicant or licensee to conduct business properly or of an intent to deceive or defraud producers.

4. That there has been a continued failure by the applicant or licensee to keep records or furnish information required by the commissioner or by law.

5. That the licensee has failed to give additional security as required under section forty-two D.

Added by St.1933, c. 338, § 2. Amended by St.1934, c. 180, § 2; St.1970, c. 690, § 1.

§ 42*I*. Notice and hearing before revocation; order; decision final

Before revoking any license issued under section forty-two A, the commissioner shall give the licensee ten days' notice, by delivery in hand or by mail, of the time and place of a hearing to determine whether or not such license shall be revoked. At such hearing, the commissioner or his duly authorized assistant shall receive evidence under oath and give the licensee an opportunity to be heard, and shall thereafter file an order either dismissing the proceeding or revoking such license. The decision of the commissioner following such hearing shall be final.

Added by St.1933, c. 338, § 2. Amended by St.1970, c. 690, § 1.

§ 42J. Unlicensed receiving of milk from producers; penalty

Except as provided in section forty-two E, any person who receives milk from producers without having a license under section forty-two A in full force and effect shall be punished by a fine of not more than fifty dollars for each consecutive period of twenty-four hours during which such unlicensed operation continues.

Added by St.1933, c. 338, § 2. Amended by St.1970, c. 690, § 1.

§ 42K. Repealed by St.1970, c. 690, § 2

§ 43. Repealed by St.1967, c. 356

§ 44. Fees for inspection or tests; dairies, etc., prohibited; penalty

No fee for making any inspection or test of live stock, or any inspection of any dairy, barn or stable, under authority of law, for the purpose of protecting the milk supply of any town, shall be requested or accepted by any official or other person making or assisting to make such test or inspection. Whoever violates this section shall be punished by a fine of not more than fifty dollars.

§ 45. Milk containers; names on caps or labels; fees; penalty

No licensed milk dealer shall sell, or have in his possession with intent to sell, milk not contained in clean vessels on which, or on a cap, tag or label attached to which, appears his own name, or the name under which his business is conducted, and no other name; but this section shall not apply to a person using clean vessels on which appears the name of another person whose written permission for such use has been obtained previously and registered in the office of the inspector of milk, in towns having such officer, and in other towns registered in the office of the town clerk upon the payment of the fee provided by clause (76) of section thirty-four of chapter two hundred and sixty-two. Whoever violates this section shall be punished by a fine of ten dollars.

Amended by St.1935, c. 317; St.1948, c. 550, § 9.

§§ 46, 47. Repealed by St.1977, c. 940, § 20

§ 48. Placing of offal, swill, etc., in containers; penalty

Whoever himself or by his servant or agent having custody of any vessel used as a container for milk intended for sale, places or causes or permits to be placed therein offal, swill, kerosene, vegetable matter or any article other than milk, skimmed milk, buttermilk, cream, other wholesale products in which dairy products constitute the major portion thereof, food products approved by the commissioner of public health for use in such vessel or water or other agent used for cleaning said vessel, or sends, ships, returns or delivers, or causes or permits to be sent, shipped, returned or delivered to any producer of milk any vessel used as a container for milk and containing any offal, swill, kerosene, vegetable matter or other offensive material, shall be punished by a fine of not more than ten dollars for each such vessel.

Amended by St.1955, c. 757, § 6; St.1963, c. 326.

§ 48A. Licensing of pasteurization establishments; penalty

No person shall maintain an establishment for the pasteurization of milk without a license from the board of health of the town where the establishment is to be located. Any person desiring such a license may make written application to such board, stating the location of the establishment and such other information as may be required by rules and regulations for the enforcement of this section, which the department of public health is hereby authorized to make. Upon receipt of the application the said board shall cause an examination of the sanitary condition of the establishment to be made, and if it is found to be in a sanitary condition, and in accordance with the requirements of said rules and regulations, and otherwise properly equipped for the business of pasteurizing milk, said board, upon receipt of a license fee of ten dollars, shall issue a license authorizing the applicant to carry on such establishment for the pasteurization of milk for one year. If any such establishment licensed hereunder is deemed by the board issuing such license or by the department of public health to be operated or maintained in an unsanitary manner, or in violation of any of said rules and regulations, or not properly equipped for the business of pasteurizing milk, the board or the department shall close such establishment until such time as it has been put in a condition to conform with the requirements of this section, and said board or department may also suspend the license if the required changes are not made within a reasonable time.

Whoever, himself or by his servant or agent, violates any provision of this section, or of the rules and regulations made hereunder, shall be punished for the first offence by a fine of not more than one hundred dollars, and for a subsequent offence by a fine of not less than fifty nor more than three hundred dollars.

This section shall not be construed to interfere with the powers and duties conferred or imposed upon boards of health of cities and towns by sections forty-one and forty-one A.

Amended by St.1976, c. 136, § 5.

§ 48B. Use by certain institutions of milk produced in commonwealth

No institution supported in whole or in part by funds of the commonwealth shall use for its daily needs milk produced elsewhere than within the commonwealth; provided, that if at any time the supply of milk so produced is insufficient for the needs of such institution, or does not conform to the required standard for such milk, such institution, while and to the extent only that such emergency exists, may use milk not produced within the commonwealth. This section shall not apply to cream or to certified milk.

Added by St.1935, c. 259.

§ 48C. Repealed by St.1977, c. 940, § 20

§ 48D. Blending milk and cream for sale

No person shall blend milk and cream for sale, nor have any such blend in his custody or possession with intent to sell the same, unless the blending has been done in a pasteurization plant licensed under the provisions of section sixteen K or section forty-eight A. Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five nor more than one hundred dollars for each offense.

Added by St.1955, c. 757, § 8. Amended by St.1977, c. 940, § 21.

§ 48E. Repealed by St.1977, c. 940, § 22

BUTTER, CHEESE AND LARD

§ 49. Oleomargarine; sale; labeling; marking

Whoever himself or by his agent sells, exposes for sale or has in his possession with intent to sell oleomargarine shall have the word "oleomargarine", "margarine", or "butterine" so stamped, labelled or marked that said word cannot be easily defaced, upon the top, side and bottom of each tub, firkin, box or package containing any of said oleomargarine. Whoever, himself or by his agent, exposes or offers for sale oleomargarine not in the original packages shall attach thereto in a conspicuous place a label bearing the words "imitation butter", or the word "oleomargarine", "margarine", or "butterine". In retail sales of oleomargarine not in the original package the seller shall attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "imitation butter", or the word "oleomargarine", "margarine", or "butterine". Each such stamp, label or mark shall be in printed letters in a straight line of not less than twenty point plain gothic type. This section shall not apply to oleomargarine served with or as a part of a meal.

Amended by St.1948, c. 453, § 3; St.1967, c. 216, § 2.

§ 50. Imitation cheese; labeling

Whoever himself or by his agent sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound, made in imitation or semblance of cheese or as a substitute therefor, and either not made by the use of coagulating agents, or containing any fats, oils or grease not produced from the milk of cows, goats or sheep, shall have the words "imitation cheese" stamped, labelled or marked in printed letters of plain, uncondensed gothic type, not less than one inch in length, so that said words cannot be easily defaced, upon the side of each cheesecloth or band around the same, and upon the top and side of each tub, firkin, box or package containing any of said article, substance or compound. In retail sales of said article, substance or compound not in the original packages, the seller shall attach to each package so sold, and shall deliver therewith to the purchaser, a label or wrapper bearing in a conspicuous place upon the outside of the package the words "imitation cheese", in printed letters of plain uncondensed gothic type, not less than one half inch in length.

Amended by St.1937, c. 335, § 3.

§ 51. Unlawful sale or advertising of imitation butter and cheese; penalty

Whoever sells, exposes for sale or has in his possession with intent to sell, any article, substance or compound made in imitation or semblance of butter or cheese or as a substitute therefor, except as provided in the two preceding sections, and whoever with intent to deceive defaces, erases, cancels or removes any mark, stamp, brand, label or wrapper provided for in said sections, or in any manner falsely labels, stamps or marks any box, tub, article or package marked, stamped or labelled as provided in said sections, or whoever himself or by his agent sells, exposes for sale, or has in his possession with intent to sell, oleomargarine, contained in any box, tub, article or package, marked or labelled with the word "dairy", or the word "creamery", or the name of any breed of dairy cattle, or whoever uses in any way in connection or association with an advertisement of margarine, oleomargarine or of any substance designed to be used as a substitute for butter, the name or representation of any dairy animal or breed of dairy cattle, or, with intent to deceive, uses in any way in such connection or association the word "butter", "creamery" or "dairy", or any other words or symbols commonly used only in advertisements of butter, shall for the first offence forfeit one hundred dollars, and for each subsequent offence two hundred dollars, to the use of the town where the offence was committed.

§ 52. Repealed by St. 1954, c. 262

§ 53. Repealed by St.1974, c. 246

§ 54. Manufacture, sale and advertising of certain imitation butter; penalty; application of section

Whoever himself or by his agent or servant renders, manufactures, sells, offers for sale, exposes for sale, takes orders for the future delivery of, has in his possession, keeps in storage, distributes, delivers, transfers or conveys with intent to sell within the commonwealth any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, which is in imitation of yellow butter produced from unadulterated milk or cream from the same, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than one year; but this section shall not prohibit the manufacture or sale of uncolored or colored oleomargarine.

Amended by St.1948, c. 453, § 1.

§ 55. Fraud in sale of oleomargarine

Whoever exposes for sale oleomargarine which is not marked and distinguished by all the marks, words and stamps required by section forty-nine, or whoever does not have upon the exposed contents of each opened tub, package or parcel of oleomargarine a conspicuous placard with the word "oleomargarine" or "margarine" printed thereon in plain, uncondensed gothic letters, not less than one inch long, or whoever himself or by his agent sells or offers for sale any oleomargarine to any person who asks or sends for butter, shall be punished by a fine of one hundred dollars.

Amended by St.1967, c. 216, § 3.

§§ 56, 57. Repealed by St.1954, c. 262

§ 58. Serving oleomargarine at hotels, restaurants, etc.; notice; penalty

Whoever furnishes oleomargarine or causes it to be furnished, instead of butter, in any hotel, restaurant or boarding house or at any lunch counter, to a guest or patron thereof, without notifying said guest or patron by means of signs or printed notices on menus, such printing to be of not less than twenty-four point type, in the English language, that the substance so furnished is not butter shall be punished by a fine of not less than ten nor more than fifty dollars.

Amended by St.1948, c. 453, § 2.

§ 59. Process or renovated butter; sale; labeling

Whoever himself or by his agent sells, exposes for sale or has in his custody or possession with intent to sell, an article or compound commonly known as process butter, and produced by taking original packing stock or other butter, or both, melting the same, so that the butter fat can be drawn off, mixing the fat with skimmed milk, or milk, cream or other milk product, and rechurning the mixture, or by any similar process, shall have "renovated butter" conspicuously stamped, labelled or marked so that the words cannot easily be defaced, in a straight line in printed letters not less than one half inch in length, of plain, uncondensed gothic type, upon the top, side and bottom of each tub, firkin, box or package containing said article or compound. The seller at retail of said article or compound which is not in the original package shall himself or by his agent attach to each package so sold and deliver therewith to the purchaser a label or wrapper bearing conspicuously upon the outside thereof the words "renovated butter" in printed letters not less than one half inch in length, in a straight line of plain, uncondensed gothic type. Whoever violates any provision of this section shall for the first offence be punished by a fine of not less than twenty-five nor more than one hundred dollars, for the second offence by a fine of not less than one hundred nor more than three hundred dollars, and for a subsequent offence by a fine of five hundred dollars or by imprisonment for not less than two nor more than three months.

§ 60. Complaints for violations of sections relative to oleomargarine, butter and cheese

Each inspector of milk shall institute complaints for the violation of any provision of sections forty-nine to fifty-eight, inclusive, sixty-two or sixty-five G to sixty-five S, inclusive, except subsections (*c*) to (*e*), inclusive, of section sixty-five P, on the information of any person who lays before him satisfactory evidence to sustain such complaint, if he has reasonable cause to believe that said provision has been violated. He may enter each place where butter, cheese or imitations thereof, or frozen desserts or frozen dessert mix as defined in section sixty-five G, are stored or kept for sale, and shall take samples of suspected butter, cheese or imitations thereof, or frozen desserts or frozen dessert mix, and cause them to be analyzed or otherwise satisfactorily tested, and shall record and preserve as evidence the result of such analysis or test. Before commencing the analysis of any sample in any proceeding for violation of any provision of sections forty-nine to fifty-one, inclusive, and sixty-five G to sixty-five S, inclusive, the analyst shall reserve and seal a portion of the sample, and, upon complaint made against the person from whom such sample was taken, such reserved portion of the sample alleged to be adulterated shall, upon application, be delivered to such person or to his attorney. The expense of such analysis or test, not exceeding twenty dollars in any one case, may be included in the expense of such prosecution.

Amended by St.1934, c. 373, § 2; St.1957, c. 356, § 1.

§ 61. Lard; sale; advertising; labeling

No person shall sell, deliver, prepare, put up, expose or offer for sale any lard, or any article intended for use as lard, which contains any ingredient except the pure fat of swine, in any tierce, bucket, pail or other vessel or wrapper, or under any label bearing the words "pure", "refined", "family", or either of them, alone or in combination with other words; but each vessel, wrapper or label in or under which such article is prepared, put up or exposed for sale, sold or delivered by him shall bear on the top or outer side thereof, in letters not less than one half inch in length and plainly exposed to view, the words "compound lard". Whoever violates any provision of this section shall for the first offence be punished by a fine of not more than fifty dollars and for a subsequent offence by a fine of not more than one hundred dollars.

§ 61A. Cheddar or American cheese

The kind of cheese known as Cheddar cheese, American cheese or American Cheddar cheese, may be sold under the designation "cheese", without qualification, and, unless its definition and standard is otherwise fixed by the laws of the commonwealth or by the department of public health under section one hundred and ninety-two, shall comply with the definitions and standards promulgated by the Food and Drug Administration of the United States Department of Health, Education, and Welfare. Cheese made from the milk of sheep or goats shall be labelled as being so made, unless it bears a name designated by the laws of the commonwealth or by said department under said section one hundred and ninety-two, or, if not bearing a name as aforesaid, by the definitions and standards of said Food and Drug Administration.

Added by St.1937, c. 335, § 4. Amended by St.1967, c. 40.

§ 62. Interference with inspector of milk, etc.; penalty

Whoever hinders, obstructs or in any way interferes with an inspector of milk or collector of samples of milk in the performance of his duties under section sixty, shall for the first offence be punished by a fine of fifty dollars and for a subsequent offence by a fine of one hundred dollars.

§ 63. Disposition of fines

All fines recovered under sections fifty-five to fifty-eight, inclusive, shall be paid to the commonwealth.

FROZEN DESSERTS AND FROZEN DESSERT MIX

§§ 64 to 65F. Repealed by St.1928, c. 299, § 2; St.1934, c. 373, § 1

§ 65G. Definitions

For the purposes of sections sixty-five G to sixty-five U, inclusive, the following words and phrases shall have the following meanings:

"Department", the department of public health.

"Frozen desserts", ice cream, French ice cream, frozen custard, ice milk, sherbet, water ice, quiescently frozen confection, quiescently frozen dairy confection, frozen dietary dairy dessert and any imitation frozen dessert.

"Frozen dessert mix", any unfrozen mixture to be used in the manufacture of frozen desserts or milk shakes.

"Imitation frozen dessert", any frozen substance, mixture or compound, regardless of the name under which it is sold or exchanged, or offered or exposed for sale or exchange, or advertised, which is made in imitation or semblance of any frozen dessert, or is prepared or frozen in the manner in which any frozen dessert is customarily prepared or frozen, and which is not ice cream, French ice cream, frozen custard, ice milk, sherbet, water ice, quiescently frozen confection or quiescently frozen dairy confection as manufactured in accordance with the regulations promulgated by the department under section sixty-five U.

Added by St.1934, c. 373, § 1. Amended by St.1950, c. 236; St.1954, c. 664, §§ 1, 2; St.1957, c. 356, §§ 3, 4; St.1959, c. 468, §§ 1, 2; St.1960, c. 45, §§ 1, 2; St.1963, c. 274, § 1; St.1967, c. 215, § 1.

§ 65H. Application for licenses and permits; suspension; revocation; inspection

Every person manufacturing within the commonwealth frozen desserts and frozen dessert mix, or either, in this paragraph called products, shall, during the month of February in each year, file with the board of health of each town in which he manufactures, or proposes to manufacture, such products, upon a form prescribed and furnished by the department, an application for a license to manufacture such products in such town, herein and in the eleven following sections called a license, for the year commencing with the following

March first, and with the application shall tender the proper fee. Such application shall state that the applicant will manufacture such products only from pure and wholesome ingredients and only under sanitary conditions; shall show the location of each plant in such town at which such products are to be manufactured; and the name of the brand or brands, and the trade or corporation name or names, if any, under which the same are to be sold.

Every person manufacturing frozen desserts and frozen dessert mix, or either, for the use of his patrons, guests or servants shall, except as hereinafter otherwise provided, obtain a license therefor. The provisions of the preceding paragraph shall, so far as applicable, apply to licenses issued hereunder.

If the owner of a plant for the manufacture of frozen desserts and/or frozen dessert mix located without the commonwealth desires to sell his product within the commonwealth he shall apply to the department for a permit to sell within the commonwealth frozen desserts and/or frozen dessert mix, herein and in the eleven following sections called a permit, and with the application shall tender the proper fee. The department may issue to any suitable applicant therefor such a permit if it is satisfied after inspection that the plant named in the application is maintained in accordance with the standards of sanitation prescribed by its rules and regulations. Such permit shall be in lieu of a license referred to in the first paragraph; shall be subject to all sanitary requirements provided for such a license; shall apply only to one such plant; shall be valid throughout the commonwealth; and may be suspended or revoked by the department as provided by section sixty-five J. The department may inspect any plant of an applicant covered by his or its application for a permit. No part of any such fee shall be returned to an applicant whether or not the permit is granted.

Nothing in sections sixty-five G to sixty-five U, inclusive, shall be deemed to require any person manufacturing frozen desserts in his home for the sole use of his family, servants and guests, or any person owning or operating a boarding house or hospital and manufacturing frozen desserts for the sole use of his family and/or his or its patrons, guests, patients or servants, or any farmer selling frozen desserts manufactured by him, whereof the milk or cream or other milk product is the product only of his own cows, to obtain any license or permit therefor.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 5; St.1967, c. 215, § 2.

§ 65*I*. Issuance of licenses or permits

The local board of health, if satisfied after inspection that the plant referred to in an application for a license or a permit, as the case may be, is maintained in accordance with the standards of sanitation prescribed in the rules and regulations promulgated by the department, may grant to any suitable applicant therefor a license, or may certify to the department an application for a permit when said local board has been requested by the department to make such an inspection. No license or permit shall be issued if any statement in the application is false or misleading, or if the brand name or any label or advertisement of the frozen dessert or of the frozen dessert mix referred to in the application gives a false indication of its origin, character, composition or place of manufacture, or is otherwise false or misleading in any particular. No person shall engage within the commonwealth in the business of manufacturing frozen desserts and/or frozen dessert mix without a license so to do from the board of health of the town where his plant is or is to be located, and no person engaged in the business of manufacturing frozen desserts and/or frozen dessert mix without the commonwealth shall sell any such product within the commonwealth without a permit from the department.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 6.

§ 65J. Revocation or suspension of licenses or permits

Any license may be revoked by the local board of health which issued it, and any permit may be revoked by the department, after notice to the holder of the license or permit by mail or otherwise and opportunity to be heard, if it appears that any statement in reliance upon which such license or permit, as the case may be, was issued was false or misleading, or for violation of any of the provisions of the license or permit or of said sections sixty-five G to sixty-five U, inclusive.

Any license may be suspended by the local board of health which issued it, and any license or permit may be suspended by the department, after similar notice and hearing and for any of the foregoing reasons, until the holder of such license or permit complies with the conditions prescribed by the department for its reinstatement.

Added by St.1934, c. 373, § 1. Amended by St.1937, c. 341, § 1; St.1967, c. 215, § 3.

§ 65K. Certiorari to correct errors of law

Any person aggrieved by a decision of a local board of health or of the department in refusing to grant or to reinstate, or in revoking or suspending, a license or permit, as the case may be, may, within fifteen days after the entry of such decision, bring a petition in the supreme judicial court for a writ of certiorari to correct errors of law therein, and the provisions of section four of chapter two hundred and forty-nine shall, except as herein provided, apply to said petition. No costs shall be allowed against the local board of health or the department, as the case may be, unless the court finds that it acted with gross negligence or in bad faith.

Added by St.1934, c. 373, § 1.

§ 65L. Certain sales or exchanges prohibited

(*a*) No person shall sell or exchange, deliver, advertise, or offer or expose for sale or exchange, or attempt to deliver, or have in his possession with intent so to do, any frozen dessert or frozen dessert mix unless the manufacturer thereof is the holder of a license or permit then in full force.

(*b*) No person shall sell or exchange, offer for sale or exchange, or advertise for sale, any frozen dessert or ice cream mix, if the brand name of the frozen dessert or ice cream mix or the label upon it or the advertising accompanying it shall give a false indication of its origin, character, composition or place of manufacture, or is otherwise false of a frozen dietary dairy dessert authorized to be manufactured and sold under section sixty-five T.

(*c*) No person shall sell or offer or expose for sale ice milk, unless contained in a package, or enclosed in a wrapper, upon which shall be conspicuously printed in the English language the words "Ice Milk" in letters not smaller than eight point type and which letters shall be larger than any other lettering upon the package or wrapper. No person shall offer for sale, or sell, any ice milk if the purchaser has requested ice cream.

(*f*) No person shall sell or exchange, or deliver or offer or expose for sale or exchange, or attempt to deliver, or have in his possession with intent so to do, frozen dessert or frozen dessert mix in a package, wrapper or other covering which does not legibly bear the name of the manufacturer or distributor of said frozen dessert and/or frozen dessert mix and/or the plant identification code number assigned by the department and/or a brand, trade or corporation name set forth in the manufacturer's application for a license or permit, or subsequently recorded with the local board of health or the department issuing the same.

This section and sections sixty-five M to sixty-five S, inclusive, shall not apply to any frozen dessert and/or frozen dessert mix in the course of interstate commerce.

Added by St.1934, c. 373, § 1. Amended by St.1937, c. 341, § 2; St.1957, c. 356, § 7; St.1963, c. 274, § 2; St.1967, c. 215, § 4; St.1977, c. 694.

§ 65M. Pasteurization

All milk, cream and milk products used in the manufacture of frozen desserts, or frozen dessert mix, or the entire mix with or without flavor or color shall be pasteurized in accordance with rules and regulations of the department.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 8; St.1967, c. 215, § 5.

§ 65N. Sale after manufacture in unclean, etc., places or manner

No person shall sell or exchange, or offer or expose for sale or exchange, or deliver, or attempt to deliver, or have in possession with intent so to do, frozen desserts or frozen dessert mix which have been manufactured in unclean, unsanitary or unhealthful premises or in an unclean, unsanitary or unhealthful manner, nor shall any person manufacture, or sell or exchange, or offer or expose for sale or exchange, or deliver, or attempt to deliver, or have in possession with intent so to do, frozen desserts or frozen dessert mix in any unclean, unsanitary or unhealthful premises or in any unclean, unsanitary or unhealthful manner.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 9.

§ 65*O*. Adulteration

Frozen desserts and/or frozen dessert mix shall be deemed to be adulterated:

First. If containing any preservative, mineral or other substance or compound deleterious to health; provided, that this clause shall not be construed to prohibit the use of harmless coloring matter when not used for fraudulent purposes; or

Second. If made in whole or in part from, or containing frozen desserts and/or frozen dessert mix for any reason unfit for food.

No person shall manufacture, sell or exchange, or offer or expose for sale or exchange, or deliver, or attempt to deliver, or have in his possession with intent so to do, any frozen dessert or frozen dessert mix not conforming to the regulations adopted by the department under section sixty-five U, or manufactured, sold, exchanged and/or delivered in violation of any provision of section sixty-five N, or adulterated within the meaning of this section.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 10; St.1967, c. 215, §§ 6, 7.

§ 65P. False labeling

(*a*) No person shall sell or exchange, or offer or expose for sale or exchange, or deliver or attempt to deliver, frozen desserts in any container which is falsely labeled as to the name of the manufacturer or place of manufacture, or in any other respect.

(*b*) No person shall misrepresent in any manner the name of the manufacturer or the place of manufacture of frozen desserts.

(*c*) No person shall use or cause to permit to be used, for the purpose of preserving or holding frozen desserts, any cabinet, can, container or other equipment owned in whole or in part by any other person, without the written consent of such owner.

(*d*) No person shall place any frozen desserts of one manufacturer in the cabinet, can, container or other equipment belonging in whole or in part to another manufacturer.

(*e*) No person, other than the owner or a person thereto authorized by him, shall remove, erase, obliterate, cover or conceal the owner's name or any distinguishing mark or device which may appear or be placed on any such cabinet, can, container or other equipment.

(*f*) Except where otherwise provided in sections sixty-five G to sixty-five U, inclusive, the provisions of sections one hundred and eighty-six to one hundred and ninety-five, inclusive, shall apply to frozen desserts and to frozen dessert mix, and to any materials intended for use, or used, in the manufacture thereof.

Added by St.1934, c. 373, § 1. Amended by St.1937, c. 341, § 3; St.1957, c. 356, § 11; St.1967, c. 215, § 8.

§ 65Q. Enforcement of sections 65G to 65U; rules and regulations

The department, and the local boards of health within their respective jurisdictions, shall enforce sections sixty-five G to sixty-five U, inclusive. The department shall from time to time, after inquiry and public hearing, adopt, amend and promulgate rules and regulations to supplement and give full effect to the provisions of said sections. Such rules and regulations shall, in addition to any other subjects, establish bacterial standards for frozen desserts and/or frozen dessert mix, hereinafter referred to as products, sanitary regulations pertaining to the manufacture and distribution of such products, including the sanitary condition of premises and buildings wherein such products are manufactured, and the sanitary condition of containers in which such products are held or shipped. Such rules and regulations shall be filed at the office of the department and of each of the boards of health within the commonwealth, shall be open for public inspection, and shall have the force of law.

Local boards of health may make rules and regulations relative to such products not inconsistent with rules or regulations of the department, or with law.

Added by St.1934, c. 373, § 1. Amended by St.1957, c. 356, § 12; St.1967, c. 215, § 9.

§ 65R. Penalties

Whoever violates any provision of sections sixty-five G to sixty-five Q, inclusive, or of any rule or regulation made under authority thereof, shall for the first offense be punished by a fine of not less than fifteen nor more than five hundred dollars, or by imprisonment for not more than six months, and for each subsequent offense by a fine of not less than fifty nor more than one thousand dollars, or by imprisonment for not more than six months, or both.

Added by St.1934, c. 373, § 1.

§ 65S. Fees for licenses and permits

The fees for licenses and permits shall be as follows:—

License for retail manufacturer, five dollars for each plant;

License or permit for wholesale manufacturer, to manufacture within the commonwealth or to sell within the commonwealth, as the case may be, not more than twenty-five thousand gallons, not less than five nor more than twenty-five dollars; more than twenty-five thousand but not more than one hundred thousand gallons, fifty dollars; more than one hundred thousand but not more than two hundred and fifty thousand gallons, one hundred dollars; more than two hundred and fifty thousand but not more than five hundred thousand gallons, one hundred and fifty dollars; more than five hundred thousand gallons, two hundred dollars. In every case where the department requests an inspection of the premises of the applicant to be made by a local board of health, the local board shall comply with said request.

Added by St.1934, c. 373, § 1.

§ 65T. Frozen dietary dairy desserts; rules and regulations

The department shall promulgate regulations establishing standards of identity for frozen dietary dairy desserts. The department may also establish regulations pertaining to the manufacture and sale of frozen dietary dairy desserts.

Added by St.1963, c. 274, § 3. Amended by St.1976, c. 193, § 1.

§ 65U. Standards of identity and labeling; regulations establishing

The department shall adopt regulations establishing standards of identity and labeling requirements for frozen desserts and frozen dessert mixes, and shall adopt regulations for the manufacture and sale of frozen desserts and frozen dessert mixes. The regulations adopted by the department establishing the standards of identity and labeling requirements shall not conflict with definitions and standards established by federal regulations and affecting frozen desserts.

Added by St.1967, c. 215, § 10. Amended by St.1976, c. 193, § 2.

COLD STORAGE

§ 66. Licensing of cold storage warehouses; suspension; report of articles in cold storage

No person shall maintain a cold storage or refrigerating warehouse without a license issued by the department of public health.

Any person desiring such a license may make written application to such department, stating the situation of his plant. Upon receipt of the application the said department shall cause an examination of the sanitary condition of the plant to be made, and if it is found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, said department upon receipt of a license fee of ten dollars shall cause a license to be issued authorizing the applicant to maintain therein a cold storage or refrigerating warehouse for one year. If any warehouse or any part thereof, licensed under this section, is deemed by said department to be conducted in an unsanitary manner, it shall close such warehouse or part thereof, until it has been put in sanitary condition, and said department may also suspend the license if the required changes are not made within a reasonable time. Each such licensee shall submit to the department of public health on or before the fifteenth day of each month, a report on a printed form to be provided by said department, stating the quantities of articles of food placed in cold storage during the month preceding, and also the quantities of articles of food held on the first day of the month in which the report is filed or such other day as the commissioner of public health may from time to time fix.

§ 66A. Application of sections 66, 70 and 71 to food in lockers; locker defined

Neither the provisions of section sixty-six which require licensees maintaining cold storage or refrigerating warehouses to make reports to the department of public health nor the provisions of section seventy or seventy-one shall apply with respect to articles of food received or stored in any locker in any such warehouse. The word "locker", as used in this section, shall mean any separate and individual compartment in any such warehouse, having a capacity of not more than twenty-five cubic feet, which is provided for use by an individual under lease or otherwise for the sole purpose of storing or freezing articles of food owned by him and intended for use and consumption by him or his family.

Added by St.1945, c. 109.

§ 67. Inspection and supervision; rules and regulations

Boards of health of towns within their towns shall inspect, and the department of public health shall inspect and supervise all cold storage or refrigerating warehouses and shall make such inspection of the entry of articles of food therein as they deem necessary to secure proper enforcement of the laws relative to cold storage. The department may make rules and regulations to secure a proper enforcement of sections sixty-six to seventy-two, inclusive, and ninety-two.

§ 68. Access to cold storage or refrigerating warehouses by department, etc.

The department of public health and local boards of health, their agents, inspectors or employees shall be permitted access to each establishment mentioned in the preceding section, and to all parts thereof at all reasonable times for the purpose of inspection and enforcement of any provision of law relative to food products.

§ 69. Regulation of cold storage

No article of food intended for human consumption shall be placed or retained in cold storage if deemed by the department of public health to be diseased, tainted or otherwise unwholesome, and no person shall return to cold storage any article of food that has once been released from such storage for the purpose of placing it on the market for sale, but this section shall not apply to the transfer of goods from one cold storage or refrigerating warehouse to another, provided that such transfer is not made for the purpose of evading any provision of sections sixty-six to seventy-two, inclusive, and ninety-two. No person shall alter, deface or remove any marking on cold storage food which shows the date of its receipt in cold storage until after the food is finally withdrawn for the purpose of immediate sale for consumption, nor shall any person transfer the ownership of food in cold storage without previously making known to the purchaser the date on which it was originally placed in cold storage.

§ 70. Time limit for holding food in cold storage; extension

No person shall hold any article of food in cold storage which has been in cold storage longer than twelve calendar months, except with the consent of the department of public health. The said department, upon application, may extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found upon examination to be in proper condition for further storage at the end of such time. The length of time for which further storage is allowed shall be specified by the department. A report on each case in which such extension of storage is permitted, including information relating to the reason for the action of said department, the kind and amount of goods for which the storage period was extended, and the period of extension, shall be included in the annual report of the commissioner of public health.

§ 71. Date of receipt of food in cold storage; marking on containers

The date of receipt into cold storage shall be plainly marked either upon the containers in which any articles of food deposited in such storage are packed, or, if not packed in containers, on or in connection with all such articles, except fish. When deposited in cold storage, all articles of food which have been previously stored in any other state or country shall be plainly marked, as above provided, with the date of their original deposit in cold storage.

§ 72. Sale of goods formerly held in cold storage; displaying sign

Except as provided in sections seventy-eight and ninety-one, no person shall sell or offer or expose for sale articles of food which have been held in cold storage without notifying each person purchasing or intending to purchase the same that they have been so held by displaying in a conspicuous place a sign marked "Cold Storage Goods Sold Here". No person shall represent or advertise as fresh goods articles of food which have been held in cold storage.

§ 73. Penalties

Whoever violates any provision of sections sixty-six to seventy-two, inclusive, and ninety-two, shall for the first offence be punished by a fine of not more than one hundred dollars, and for a subsequent offence by a fine of not more than five hundred dollars or by imprisonment for not more than one month, or both.

FROZEN FOOD

§ 73A. Transportation; frozen food defined; construction; penalty

No person engaged in the business of storing frozen food or transporting such food shall store or transport such food within the commonwealth unless it is stored or transported under refrigeration which shall insure good keeping qualities and under temperatures and holding conditions approved by the director of the division of food and drugs of the department of public health. Said director may, after public hearing, make regulations for the storing and transportation of frozen food, including temperature control, sanitation and other matters, in accordance with recognized standards necessary for the protection of the public health and the preservation of such food in wholesome condition. The term "frozen food", as used in this section, shall include food of any kind which has been preserved by a process of freezing. Nothing in this section shall be construed to apply to delivery of such food by a retailer to the purchaser.

Whoever violates any provision of this section or of any regulation made hereunder shall be punished by a fine of not more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than five hundred dollars for each subsequent offense.

Added by St.1959, c. 423.

FISH

§§ 74 to 77. Repealed by St.1933, c. 329, § 7; St.1941, c. 598, § 2

§ 77A. Classification of fish; definition

All fresh food fish before being offered for sale, placed in cold storage, salted or smoked shall be graded as follows:—

"Prime", fish in extra fine condition.

"Superior", fish in suitable condition to stand shipment outside the commonwealth for human consumption as fresh fish.

"Standard", fish in suitable condition for immediate human consumption as fresh fish.

All other fish shall be classified as refuse, shall be deemed unsuitable for human consumption, and may be used only for fish meal, fertilizer or other non-food purposes.

No person shall represent, sell, offer for sale or advertise fresh, frozen, salted or smoked fish of any grade under any misleading or other than the truthful and correct name and grade or corresponding term for such fish.

The word "fish" as used in this section shall be taken to mean only swimming fish or finny fish of the class known as Pisces.

Added by St.1964, c. 524, § 12.

§ 77B. Marking containers deposited in cold storage; date of receipt

Food fish, unless deposited in bulk, when deposited in cold storage except in private freezing plants, shall be plainly marked with the date of receipt on the containers in which they are packed; and if deposited in bulk, shall at the time of removal from cold storage be plainly marked on such containers with the month and year of receipt.

Added by St.1964, c. 524, § 12.

§ 77C. Sale of frozen fish otherwise than frozen

No person shall sell, or represent for the purpose of sale, otherwise than as frozen, fish which have been frozen.

Added by St.1964, c. 524, § 12.

§ 77D. Importation of fresh swordfish

No person shall import, or cause to be imported into this commonwealth for purposes of sale, any fresh swordfish unless properly packed in ice so as to prevent the same from becoming infected, contaminated or unwholesome.

Added by St.1964, c. 524, § 12.

§ 77E. Marking of imported fish formerly in cold storage

No person shall deposit or cause to be deposited in cold storage for a period exceeding six months fish received from any other state or country which have been previously in cold storage either within or without this commonwealth, unless at the time of deposit such fish are plainly marked with the date of their original deposit in cold storage, whether within or without.

Added by St.1964, c. 594, § 12.

§ 77F. Sale of food fish by weight; exception

All food fish, except soft-shelled claims and oysters sold at wholesale, shall be sold by weight. Whoever violates this section shall be punished by a fine of not less than ten nor more than fifty dollars.

Added by St.1964, c. 524, § 12.

§ 77G. Use of dead lobsters for food purposes; rapid freezing of live lobsters

Whoever cooks, buys, sells, offers or exposes for sale, gives away, or knowingly delivers, transports, ships, or receives for food purposes any lobster, or similar species of crustacea, or any part thereof, which is uncooked and dead, or which was cooked after it was dead, shall be punished by a fine of not less than two hundred and fifty nor more than five hundred dollars, or by imprisonment for not less than ten nor more than sixty days, or both; provided, however, that it shall not be a violation of this section to cook, buy, sell, offer or expose for sale, give away or knowingly deliver, transport, ship or receive any lobster processed for food by a rapid freezing method, by a person who has been licensed or certified under this section, as hereinafter provided.

The department of public health may license any person to process within the commonwealth live lobsters in the shell of legal length for food by a rapid freezing method approved by it. The department shall from time to time adopt rules and regulations governing the processing of such lobsters and the sanitary conditions required for the establishment of a person licensed hereunder.

The department may certify any person engaged in processing outside the commonwealth live lobsters in the shell of legal length for food by a rapid freezing method; provided, that the board of health, or an officer or body having similar powers of the municipality, or other governmental unit wherein such lobster was so processed, certifies to the satisfaction of the department that such lobster was alive when processed and was processed under sanitary and healthful conditions.

Each container of lobsters processed by a rapid freezing method shall bear a plainly marked label, which shall include the license number or name of the packer, and the date of the processing of said lobsters.

Added by St.1964, c. 524, § 12. Amended by St.1966, c. 460.

§ 77H. Purchase, sale or transportation of lobster or crab meat taken from shell; seizure; confiscation; permit for sale; inspection of premises; marking of packages

No person shall buy, sell, expose for sale, give away, deliver, transport, ship, carry or have in his possession any lobster meat or crab meat after the same has been taken from the shell, except as hereinafter provided. Any lobster meat unlawfully sold, given away, shipped, bought, transported or possessed shall be liable to seizure and may be confiscated. The foregoing shall not apply to such lobster meat or crab meat in the possession of a common carrier for transportation and which is marked as provided in section forty-seven of chapter one hundred and thirty or of which it has no notice; nor to canned lobster meat or crab meat when certified, to the satisfaction of the commissioner of public health, by the board of health or a body having similar powers of the municipality or other governmental unit, where canned, to have been in suitable condition for human consumption when canned, and to have been canned under healthful conditions, and so as to insure the continuance, until use, of such condition; nor to such meat sold for food by a licensed victualler if such meat has been obtained from a dealer holding a permit as hereinafter provided; nor to such meat removed from the shell on the premises where it is to be eaten; nor to such meat removed from the shell by a wholesale or retail dealer in lobster, or edible crabs, at his regular place of business therefor if said dealer has a written permit from the director of marine fisheries in the department of natural resources for the sale and delivery of such lobster or crab meat and if such meat is so removed or sold under such conditions and regulations as the commissioner of public health shall prescribe, and if such premises are at all reasonable times open to the inspection of the commissioner, his agents or inspectors. No permit shall be required for the resale of such meat so long as it remains in the original unbroken package; provided that such package is clearly labeled with the words "lobster meat removed under permit No. ____", followed by the number of the permit under which said lobster meat was removed. Such a permit may be granted upon written application to the said director and the payment of a fee of ten dollars, shall expire on December thirty-first next succeeding the date of issue, and shall be revoked by the said director upon the request of the commissioner of public health for the violation by the holder thereof of any rule or regulation.

Added by St.1964, c. 524, § 12.

§ 77*I*. Definitions

As used in sections seventy-seven A to seventy-seven H, inclusive, the following words shall have the following meanings unless a contrary intention appears:—

"Canned lobster meat or crab meat", lobster meat or crab meat preserved by heat processing, freezing, or refrigeration, and packed in a container impervious to contamination and so sealed that once opened it cannot be re-sealed and re-used for its original purpose.

"Clam", a marine mollusk of the species Mya arenaria commonly called the soft-shelled clam.

"Fish", any animal life inhabiting the ocean or its connecting waters including any crustacean or marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or not imbedded in the soil. All provisions of said sections relative to fish shall, so far as apt, apply also to lobster meat and crab meat after the same has been taken from the shell.

"Lobster", the common American lobster, of the species Homarus americanus.

"Quahaug", a marine mollusk of the species Venus mercenaria commonly called the hard-shell clam.

"Scallop", a marine mollusk of the species Pecten irradians, commonly known as the bay scallop or shallow water scallop.

"Shellfish", clams, conchs, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.

Added by St.1964, c. 524, § 12.

§§ 78 to 83. Repealed by St.1933, c. 329, § 7; St.1941, c. 598, § 2

§ 84. Quintal weight of fish

If fish are sold by the quintal, it shall mean a quintal of one hundred pounds avoirdupois, and all contracts relative to fish thus sold shall be so construed.

§ 85. Clam bait; contents of barrel

If clam bait is sold by the barrel, "barrel" shall mean a fish barrel of not less than twenty-eight nor more than twenty-nine gallons, and containing twenty-six gallons of clams and not more than three gallons of pickle. If the purchaser and seller disagree as to the quantity in a barrel, either party may have it measured by the director of standards or a sealer of weights and measures. If such barrel does not contain the said number of gallons of clams, the seller shall receive payment for the number of gallons of clams it does contain, but shall pay the expense of measuring and coopering; otherwise the purchaser shall pay such expense.

Amended by St.1939, c. 261, § 7; St.1968, c. 467, § 10.

§ 86. Weighing, sorting and culling fish; certificate of weight; rules and regulations

All fish when landed from a vessel or boat shall be weighed by a public weigher of fish or his deputy, when so requested or demanded by the buyer or seller of such fish or by the master, agent or a majority of the crew of such vessel or boat; and said weigher shall issue a certificate of weight to the seller and a duplicate to the buyer. The secretary of consumer affairs may adopt, amend or repeal, and shall enforce, all such reasonable rules and regulations, and orders thereunder, as may be necessary or suitable in relation to the weighing, sorting and culling of fish when landed from a vessel or boat. Whoever violates said rules or regulations or orders thereunder shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Amended by St.1955, c. 415; St.1969, c. 704, § 40.

§ 87. Record of weight, etc.

Each deputy shall report to such weigher the weight of fish weighed by him, and the weigher shall keep a complete record of such weight with the date of weighing, the name of the vessel from which the fish were taken and the person for whom they were weighed.

§ 88. Fees for weighing

The fees for weighing fish shall be twenty cents per one thousand pounds, but in no case less than one dollar, and shall be paid by the person applying to have the fish weighed. Each deputy shall pay to the weigher two cents per one thousand pounds for all fish weighed by him.

§ 88A. Repealed by St.1941, c. 598, § 2

§ 88B. Sale of shucked scallops or quahaugs in shell by weight

No shucked scallops or quahaugs in the shell shall be sold except by weight. Whoever himself or by his servant or agent violates any provision of this section shall be punished by a fine of ten dollars.

Added by St.1936, c. 176.

§ 88C. Rules and regulations

The commissioner of public health shall adopt rules and regulations relative to the sanitary conditions required for establishments, and persons operating such establishments, for which certificates or permits are required by chapter one hundred and thirty or by this chapter for the commercial processing or distribution of food fish, including lobsters, crabs, the meat from either, finny fish of the class known as Pisces, and shellfish, and for the sanitary requirements of boats and other vehicles or structures used in the catching, storage or transportation of such food fish; provided that all such rules and regulations shall meet the requirements of the United States as to interstate commerce in fish or shellfish and of other states in relation to the importation, inspection and consumption thereof within their respective limits.

Added by St.1964, c. 524, § 13.

§ 88D. Inspection of fish offered for sale; seizure and destruction of unfit fish; disposition of money; penalty

The commissioner, his agents or inspectors may inspect all fish offered or exposed for sale or kept with intent to sell, and for such purpose may enter any place where fish is stored, kept, offered or exposed for sale, may examine the conditions of such place and the equipment thereof and may require that such place and equipment be kept in a sanitary condition. If on inspection it is found that such fish is tainted, diseased, corrupted, decayed, unwholesome or unfit for food from any cause, the inspector shall seize and cause the same to be destroyed forthwith or disposed of otherwise than for food. All money received for fish disposed of as aforesaid, after deducting the expense of said seizure and disposal, shall be paid to the owner of such fish. Whoever, by himself or by his agent or employee, sells, or offers or exposes for sale, or keeps with intent to sell or offer or expose for sale, for food purpose fish which is tainted, diseased, corrupted, decayed, unwholesome or unfit for food from any cause, or whoever violates any provisions of sections seventy-seven A to eighty-eight D, inclusive, or any rule or regulation made thereunder, or hinders, obstructs, or interferes with any inspection authorized hereunder, or secretes or removes fish for the purpose of preventing such inspection shall be punished by a fine of not more than five hundred dollars or by imprisonment for six months, or both.

Added by St.1964, c. 524, § 13.

EGGS

§ 89. License to can eggs; application; rules and regulations

Application for the carrying on of an establishment for the breaking and canning of eggs shall be made by the proprietor thereof to, and may be granted by, the aldermen or selectmen, or, in a town having a population of more than five thousand, the board of health. The application shall be written, signed and sworn to by one or more of the owners or persons carrying on the business, or if a corporation by some authorized officer thereof, and shall state the name and address of all such owners or persons, the location of the establishment and the nature of the products thereof which are to be sold or used for food. The board of health of a town may make and enforce such rules and regulations as it deems necessary for the conduct of such establishments, and any license therefor may be revoked for any violation of such rules and regulations, after notice to the licensee and a hearing before said board. This section shall also apply to licenses for establishments mentioned in section one hundred and forty-four.

§ 90. Canning eggs without license; penalty

Whoever carries on an establishment for the breaking or canning of eggs without a license as provided in the preceding section shall be punished by a fine of not less than ten nor more than one hundred dollars or by imprisonment for not more than three months, or both.

§ 90A. Sale of eggs regulated; eggs with treated shells

Except as hereinafter otherwise provided, no person shall sell, or offer, expose or advertise for sale, eggs as "fresh eggs", "strictly fresh eggs", "nearby eggs" or "new-laid eggs" or eggs described with words of similar import, unless they meet the following specifications when examined by a method known as "candling", viz.:—(1) the shell shall be clean and sound, (2) the air cell shall be not more than one quarter inch in depth and shall be localized and regular in outline, (3) the white shall be firm and clear, (4) the yolk shall not be plainly visible but may be dimly or slightly visible, and (5) there shall be no visible germ development.

Not more than ten per cent of the number of eggs sold at wholesale or offered, exposed or advertised for sale as aforesaid under any such description, and not more than two eggs in each dozen sold at retail or offered, exposed or advertised for sale as aforesaid under any such description, may vary from the foregoing specifications but only in the following particulars:—(1) the air cell may be not more than three eighths of an inch in depth and may be slightly tremulous, (2) the yolk may be plainly visible and mobile, (3) the white may be reasonably firm, and (4) germ development may be slightly visible; and, in addition, there shall be permitted, in respect to the selling, or offering, exposing or advertising for sale, of eggs at wholesale as aforesaid, a reasonable tolerance established by rules and regulations of the department, authority to establish the same being hereby granted.

No person shall sell, or offer or expose for sale, eggs which have been preserved or protected by treating the shells thereof unless the basket, box or other container in which the eggs are placed shall be plainly marked with letters not less than one half inch in height as "shell-treated" or "shell-protected". Whoever violates any provision of this section shall be punished by a fine of not more than twenty-five dollars for the first offence, and not more than one hundred dollars for each subsequent offence. The department of agriculture shall enforce the provisions of this section.

Added by St.1935, c. 369.

§ 90B. Standard sizes for eggs offered for sale, etc.; exception; rules and regulations

No person shall sell, or offer or expose for sale, eggs unless the carton or other container thereof contains or bears a proper designation or description relating to the size of such eggs, as hereinafter provided, and no person shall advertise eggs for sale at stated prices unless such advertisement contains a proper designation or description relating to the size of such eggs, as hereinafter provided.

Eggs shall be divided into six sizes to be known as "jumbo", "extra large", "large", "medium", "pullet or small", and "peewee". The proper designation of size shall be plainly and conspicuously shown in the sale, or offering or exposing for sale, of eggs and in the advertisement for the sale thereof if the price is stated in the advertisement.

"Jumbo" eggs shall be eggs having an average weight of not less than thirty ounces per dozen with no egg or eggs below the rate of twenty-nine ounces per dozen. A tolerance of not more than four per cent by volume shall be allowed in this classification, but eggs under this tolerance shall weigh not less than at the rate of twenty-eight ounces per dozen.

"Extra Large" eggs shall be eggs having an average weight of not less than twenty-seven ounces per dozen with no egg or eggs below the rate of twenty-six ounces per dozen. A tolerance of not more than four per cent by volume shall be allowed in this classification, but eggs under this tolerance shall weigh not less than at the rate of twenty-five ounces per dozen.

"Large" eggs shall be eggs having an average weight of not less than twenty-four ounces per dozen with no egg or eggs below the rate of twenty-three ounces per dozen. A tolerance of not more than four per cent by volume shall be allowed in this classification, but eggs under this tolerance shall weigh not less than at the rate of twenty-two ounces per dozen.

"Medium" eggs shall be eggs having an average weight of not less than twenty-one ounces per dozen with no egg or eggs below the rate of twenty ounces per dozen. A tolerance of not more than four per cent by volume shall be allowed in this classification, but eggs under this tolerance shall weigh not less than at the rate of nineteen ounces per dozen.

"Pullet or Small" eggs shall be eggs having an average weight of not less than eighteen ounces per dozen with no egg or eggs below the rate of seventeen ounces per dozen. A tolerance of not more than four per cent by volume shall be allowed in this classification, but eggs under this tolerance shall weigh not less than at the rate of sixteen ounces per dozen.

"Peewee" eggs shall be eggs having an average weight of less than eighteen ounces per dozen.

The provisions of this section shall not apply to the sale, or offering or exposing for sale, of eggs at wholesale unless they are packed in cartons or other containers for resale at retail; nor shall they apply to the sale, or offering or exposing for sale, of eggs unsorted as to size, if the cartons or other containers thereof are plainly and conspicuously marked and identified as "not sized", and if any advertisement advertising such eggs for sale at stated prices clearly indicates that such eggs are "not sized".

The commissioner of food and agriculture is hereby authorized, after a hearing, due notice whereof shall have been given, to establish rules and regulations for the enforcement of this section, and the department of food and agriculture shall enforce said provisions.

Whoever violates any provision of this section, or any rule or regulation made thereunder, shall be punished for the first offence by a fine of not more than twenty-five dollars, and for a subsequent offence by a fine of not more than fifty dollars. Whoever obstructs or hinders said commissioner or any of his assistants in the performance of his duties under this section shall be punished by a fine of not more than fifty dollars.

Added by St.1938, c. 404. Amended by St.1951, c. 266; St.1975, c. 706, § 143.

§ 90C. Grades; establishment

The commissioner of food and agriculture shall establish official grades of eggs sold, offered for sale, exposed or advertised for sale, at retail, within the commonwealth, and may from time to time modify such grades. Before establishing or modifying any such grades the commissioner shall after reasonable notice setting forth the date, place and purpose, hold a public hearing.

Added by St.1962, c. 393, § 1. Amended by St.1975, c. 706, § 144.

§ 90D. Grades; criterion; marking; enforcement of section; rules and regulations

The grades so established shall include grades closely correlated to the United States consumer standards for shell eggs. The standards of quality for the Massachusetts consumers grades of shell eggs shall be grade "AA", "A", "B" or "not graded." The final determination of grades shall be made by "candling". All eggs for sale at retail within the commonwealth shall be in containers so marked or branded, with letters not less than three-eighths of an inch in height. Advertising of eggs offered for sale at retail at a stated price shall include the grades. Eggs described as "farm fresh eggs", "fresh eggs", "strictly fresh eggs", "nearby eggs", or "native eggs" or eggs described with words of similar import shall meet the specifications of section ninety A. The commissioner of food and agriculture and his duly authorized assistants shall determine the responsibility for marking and branding. Any edible egg not conforming to such grades shall be sold as checks, cracks, or stains.

The department of food and agriculture shall enforce the provisions of this section. The commissioner may establish such rules and regulations as may be deemed necessary to carry out the purposes of section ninety C and this section.

Added by St.1962, c. 393, § 1. Amended by St.1963, c. 116; St.1965, c. 52; St.1975, c. 706, §§ 145, 146.

§ 90E. Penalty for violation of section 90D

Whoever, himself or by his servant or agent, misbrands eggs and sells, distributes, or offers or exposes for sale such misbranded eggs shall be punished for the first offense by a fine of not more than fifty dollars and for a subsequent offense by a fine of not more than two hundred dollars. Whoever obstructs or hinders the commissioner of food and agriculture or any of his duly authorized assistants in the performance of his duties under section ninety D shall be punished by a fine of not less than ten dollars nor more than one hundred dollars.

Added by St.1962, c. 393, § 1. Amended by St.1975, c. 706, § 147.

§ 91. Sale of eggs taken from cold storage; markings; penalty

Whenever eggs which have been in cold storage are sold at wholesale or retail, or offered or exposed for sale, the basket, box or other container in which the eggs are placed shall be marked plainly and conspicuously with the words "cold storage eggs", or there shall be attached to such container a placard or sign having on it the said words. If eggs which have been in cold storage are sold at retail or offered or exposed for sale without a container, or placed upon a counter or elsewhere, a sign or placard, having the words "cold storage eggs" plainly and conspicuously marked upon it, shall be displayed among, upon or immediately above the said eggs. The display of the words "cold storage eggs" shall be in letters not less than one inch in height, except that the container in which eggs sold at retail are delivered to the customer may be marked in letters less than one inch in height if uncondensed gothic type is used, but such letters shall in no case be less than one half inch in height. All markings required by this section shall be done in a manner approved by the commissioner of public health. Whoever violates this section shall be punished by a fine of not less than ten nor more than five hundred dollars.

§ 92. Denaturing and marking of broken eggs in cold storage

Broken eggs packed in cans, if not intended for food, shall be denatured when deposited in cold storage, and shall be marked by the owner, in accordance with forms prescribed by the department of public health, so as plainly to indicate that they are not to be sold for food.

§ 92A. Sale of decayed or decomposed eggs; regulations; penalty

No person shall sell or offer or expose for sale for food purposes, or have in possession with intent to sell for such purposes, eggs which, either before or after removal from the shell, are wholly or partly decayed or decomposed, eggs in the fluid state, any part of which is wholly or partly decayed or decomposed, eggs, in the fluid state or otherwise, which are mixed with parts of eggs derived from eggs which are wholly or partly decayed or decomposed, or frozen masses of broken eggs, if the mass contains eggs wholly or partly decayed or decomposed, or which are mixed with parts of eggs taken from eggs which were wholly or partly decayed or decomposed; nor shall any person use in the preparation of food products eggs which are wholly or partly decayed or decomposed, or deliver or sell such eggs in or at any establishment where food products are prepared or manufactured, or purchase or accept the same in or at any such establishment for use in the preparation of food products; but nothing in this section shall prohibit the purchase, sale or possession for other than food purposes of such eggs. The department of public health shall enforce this section. Violation of any provision of this section shall be punished by a fine of not less than ten nor more than one thousand dollars, or by imprisonment for not less than three months, or both.

MEATS, POULTRY AND FISH

§ 92B. Sales at retail; weight; penalty

All meats, poultry and edible fish, except soft shell clams and oysters, shall be sold at retail only by weight and, except when sold in package form bearing a plain and conspicuous statement of quantity of contents as provided in section one hundred and eighty-one, such weight shall be determined at the time of sale. Whoever himself or by his servant or agent violates any provision of this section shall be punished by a fine of ten dollars.

Added by St.1935, c. 97. Amended by St.1959, c. 219.

CHOCOLATE

§§ 93 to 95. Repealed by St.1928, c. 362

FRUITS, VEGETABLES AND NUTS

§ 96. Sale by dry measure or numerical count; "original standard container" defined; penalty

Except as otherwise provided in sections ninety-eight and ninety-nine and in chapter ninety-nine, or except when sold in the original standard container, all fruits, nuts, vegetables and grain shall be sold at retail by avoirdupois weight or numerical count. The words "original standard container", as used in this section shall mean and include only barrels, boxes, baskets, hampers or similar containers, the dimensions or capacity of which is established by law of this commonwealth or by act of congress, the contents of which have not been removed or repacked by the retailer, and upon which is plainly and conspicuously marked the net quantity of the contents thereof in terms of weight, measure or numerical count. This section shall not apply to the sale of apples repacked under the provisions of section one hundred and four nor to the sale, by the bunch, of fresh beets, onions, turnips, rhubarb and other similar vegetables usually and customarily sold by the bunch. Whoever violates any of the provisions of this section shall be punished by a fine of not more than ten dollars.

§ 97. Repealed by St.1922, c. 355, § 8

§ 98. Capacity of baskets, etc., used in sale of berries; test of capacity

Baskets or other receptacles holding one quart or less which are used or intended to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, raspberries or gooseberries shall be of the capacity of one quart, one pint or one half pint, Massachusetts standard dry measure. Said baskets or other receptacles shall not be required to be tested and sealed as provided by chapter ninety-eight, but the sealer or deputy sealer of weights and measures of any town or the director of standards may, if he so desires, and shall, upon complaint, test the capacity of any basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and if the same is found to contain less than the standard measure he shall seize the same and make complaint against the vendor.

Whoever sells or offers for sale a basket or other receptacle holding one quart or less to be used in the sale of any of the aforesaid fruit which does not conform to said standard, and whoever sells or offers for sale any of the aforesaid fruit in any basket or other receptacle holding one quart or less which does not conform to said standard, shall be punished by a fine of not less than five nor more than ten dollars.

Amended by St.1939, c. 261, § 8; St.1968, c. 467, § 11.

§ 99. Strike or level measure; exception

Berries, except cranberries, when sold shall, subject to the preceding section, be measured by the strike or level measure.

§ 99A. Standard box for farm produce; standard half box; lug; specifications; markings

The Massachusetts standard box for farm produce sold at wholesale, except as otherwise provided, shall contain two thousand one hundred fifty and forty-two one hundredths cubic inches and shall be of the following dimensions by inside measurements: seventeen and one half inches in length by seventeen and one half inches in width and seven and one sixteenth inches in depth. The Massachusetts standard half box for farm produce sold at wholesale shall contain one thousand seventy-five and twenty-one one hundredths cubic inches and shall be of the following dimensions by inside measurements: twelve and three eighths inches in length by twelve and three eighths inches in width and seven and one sixteenth inches in depth. When the above specified boxes are made of wood the ends shall be not less than five eighths inches in thickness and the sides and bottom not less than three eighths inches in thickness. All such boxes and half boxes of the dimensions specified herein shall be marked on at least one outer side in bold, uncondensed capital letters, not less than one inch in height:—Standard Box Farm Produce,—and,—Standard Half Box Farm Produce,—respectively. The Massachusetts lug for tomatoes sold at wholesale or retail shall contain one thousand seventy-eight and forty-three one hundredths cubic inches and shall be of the following dimensions by inside measurements: seventeen and one half inches in length by eight and one half inches in width by seven and one quarter inches in depth. Whoever marks or otherwise represents any box or half box to be a standard box or half box for the sale of farm produce at wholesale shall, unless such box or half box complies with every specification and requirement of this section, be punished by a fine of not more than fifty dollars. The director of standards in the executive office of consumer affairs, his inspectors and the sealers and deputy sealers of weights and measures in cities and towns shall enforce the provisions of this section.

Amended by St.1939, c. 261, § 9; St.1952, c. 121; St.1968, c. 467, § 12; St.1969, c. 704, § 41.

§ 99B. Sale of fruit, vegetables or turkeys; designation as "native"; penalty

No person shall sell or offer to sell or pack for sale or distribution in the commonwealth fruit, vegetables or turkeys in containers bearing the label or designation "native" nor cause fruit, vegetables or turkeys to be advertised as "native" unless the name of state in which such fruit, vegetables or turkeys were grown appears immediately after the word "native". Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1961, c. 85. Amended by St.1962, c. 181; St.1963, c. 158; St.1966, c. 65.

APPLES

§ 100. Repealed by St.1959, c. 528, § 2

§ 101. Official grades; establishment; modification; notice; hearing

The commissioner of food and agriculture shall establish and promulgate official grades of apples packed or repacked within the commonwealth, and may from time to time amend or modify such grades. Before establishing, amending or modifying any such grades, the commissioner shall consult with growers and shippers of apples relative to proposed grades, or, upon written petition of twenty-five or more growers producing annually an aggregate of not less than one hundred thousand bushels of apples, the commissioner shall, after reasonable notice, specifying the date, place and purpose of the proposed hearing, hold a public hearing for the purpose of obtaining information with a view to establishing, or amending or modifying, as the case may be, such official grades. The grades so established and promulgated shall include grades identical in name and requirements with all grades or standards of apples as promulgated, from time to time, by the secretary of agriculture of the United States and commonly known as the United States grades.

Added by St.1959, c. 528, § 3. Amended by St.1975, c. 706, § 148.

§ 102. Marking or branding

The person possessing the apples at any time shall be deemed responsible for the proper marking of the apples. Each package of apples packed or repacked within the commonwealth and intended for sale within or without the commonwealth, shall be marked or branded at the time of packing, repacking or closing with a statement of the name and legal address of the person by whose authority the apples were packed, the true name of the variety, the official grade designation, and the minimum size or numerical count of the apples contained therein. Each package, lot or open bulk display of apples sold, offered, exposed or advertised for sale at retail shall be plainly marked and identified as to variety, official grade and size. The provisions of this section shall not apply to apples that are in transit from the grower to storage, packer, repacker, or processor, provided that invoices from the grower showing the destination, quantity and ownership of such apples accompany each lot. If the true name of the variety is not known the marks shall include the words "variety unknown".

Added by St.1959, c. 528, § 3.

§ 103. Advertisement

Open bulk display signs, printed sales statements and all advertisements by radio, television, newspaper or other media shall state the variety, official grade designation and size of apples whenever the price is shown, stated or written in connection with the sale of apples.

Added by St.1959, c. 528, § 3.

§ 104. Misleading packing

No person shall sell or offer for sale, or transport for sale, in either open or closed packages, apples packed in such a manner that the faced or shown surface shall not be an average of the contents of the package.

Added by St.1959, c. 528, § 3.

§ 105. Misbranding

For the purpose of section one hundred and one to one hundred and nine, inclusive, apples packed in closed or open packages or apples in open bulk displays shall be deemed to be misbranded:—

First. If any package, or any open bulk display fails to bear all statements required under section one hundred and two.

Second. If any package whether packed or repacked within or without the commonwealth, is falsely branded or bears any statement, design or device regarding the apples contained therein which is false or misleading, or if any package bears any statement, design or device indicating that the apples contained therein are of a specified grade established and promulgated under section one hundred and one, and said apples, when packed or repacked, do not conform to the requirements prescribed for such grade, or if any package bears any statement, design or device other than an official grade designation describing the grade or quality of the apples therein.

Added by St.1959, c. 528, § 3.

§ 106. Rules and regulations; access to packing places and storehouses; samples

The commissioner of food and agriculture shall make and may modify rules and regulations for enforcing sections one hundred and one to one hundred and nine, inclusive, and shall, either in person or by his assistant, have free access at all reasonable hours to any place, building or vehicle wherein apples are packed, stored, transported, sold, offered or exposed for sale or for transportation at any time. He may also, in person or by his assistant, open each box, package or other container, and upon tendering the market price, may take as a sample such container, with or without its contents, or any apples therefrom.

Added by St.1959, c. 528, § 3. Amended by St.1975, c. 706, § 149.

§ 107. Enforcement of sections 99B, 101 to 105, 109; prosecutions; notice

The commissioner of food and agriculture and his duly authorized assistants shall have authority to enforce section ninety-nine B, sections one hundred and one to one hundred and five, inclusive, and one hundred and nine, and to prosecute all violations thereof. Before any prosecution is begun by the commissioner of agriculture or any of his duly authorized assistants the parties concerned shall be given an opportunity to be heard before the said commissioner or a person designated by him for such purpose. The parties concerned shall be given reasonable notice of hearing, specifying the day, hour and place thereof and accompanied by a description of the alleged violation. Such hearings shall be governed by rules and regulations prescribed by said commissioner.

Added by St.1959, c. 528, § 3. Amended by St.1967, c. 217; St.1975, c. 706, § 150.

§ 108. Penalties

Whoever, himself or by his servant or agent misbrands apples within the meaning of section one hundred and five or advertises apples for sale in violation of section one hundred and three, or packs, repacks, sells, distributes or offers or exposes for sale or distribution apples which are misbranded, or packs, repacks, sells, distributes or offers for sale or distribution apples in closed or open packages so packed or repacked that the faced or shown surface gives a false representation of the color, size or quality of the other apples in the package, or packs, repacks, sells, distributes, offers or exposes for sale or distribution apples otherwise in violation of any provision of section one hundred and one to one hundred and nine, inclusive, or wilfully alters, effaces or removes, or causes to be altered, effaced or removed, wholly or partly, any brands or marks put upon any package of apples under authority of said sections, shall be punished for the first offence by a fine of not more than fifty dollars, and for a subsequent offence by a fine of not more than two hundred dollars. Whoever obstructs or hinders the commissioner of food and agriculture or any of his assistants in the performance of his duties under sections one hundred and one to one hundred and seven, and section one hundred and nine, inclusive, shall be punished by a fine of not less than ten nor more than one hundred dollars.

Added by St.1959, c. 528, § 3. Amended by St.1975, c. 706, § 151.

§ 109. Storage; conditions; storage records

No person shall sell or exchange or offer or expose for sale or exchange or transport for sale any apples represented as having been exposed to "controlled atmosphere" or "modified atmosphere" or shall so use any such term or form of words or symbols of similar import on any container or lot of apples advertised, sold, offered for sale or transported for sale within this state unless such apples have been kept in a room or storage building with not more than five per cent oxygen for a minimum of ninety days. A storage record on a form approved by the commissioner of food and agriculture shall be kept at a convenient location adjacent to said room or storage building from the day of sealing to the day of opening of said room or storage building, and shall be preserved for inspection at any time by said commissioner or his authorized agents for a period of not less than one year after such opening.

Added by St.1959, c. 528, § 3. Amended by St.1975, c. 706, § 152.

§§ 110 to 114. **Repealed by St.1931, c. 194**

CRANBERRIES

§ 115. **Legal and standard barrel and crate for cranberries**

The legal and standard barrel for cranberries shall measure not less than twenty-five and one fourth inches between the heads, inside; the length of the staves shall be twenty-eight and one half inches; the diameter of the head shall be not less than sixteen and one fourth inches, including the bevelled edge; the outside bulge circumference shall measure not less than fifty-eight and one half inches; the thickness of the staves shall be not greater than four tenths of an inch. The legal and standard crate for cranberries shall measure seven and one half inches, by twelve inches, by twenty-two inches, inside, exclusive of any interior partition or support, and shall have an interior capacity of one thousand nine hundred and eighty cubic inches; but any square or oblong crate or box of different form, but of as great interior capacity, shall be considered a legal and standard crate.

§ 116. **Barrels and crates; one half crates; one quarter crates; markings**

Each barrel, crate, one half crate or one quarter crate used for the sale or delivery of cranberries shall be of the standard measure prescribed in this or the preceding section, and shall be marked as therein required. No person shall use any barrel, crate, one half crate or one quarter crate for such sale or delivery, the capacity of which is less than that of the corresponding standard package prescribed in the preceding section. Sealers of weights and measures shall enforce this and the preceding section. Whoever violates any provision of this or the preceding section shall be punished by a fine of not more than one hundred dollars.

It shall be lawful to use for the sale and delivery of cranberries, square or oblong packages which contain one half crate or one quarter crate, provided that such packages have an interior capacity, exclusive of any partition or support, of nine hundred and ninety and of four hundred and ninety-five cubic inches, respectively. No barrel, crate, one half crate or one quarter crate, intended to be used for the sale or delivery of cranberries, except of the standard measure specified in this section, and plainly marked with the words "Massachusetts Standard Measure", shall be manufactured or sold. No person shall so mark any barrel or other package so used, or intended to be used, unless its interior capacity is as great as the capacity herein specified for such package.

Nothing in this or the preceding section shall prohibit the use of third, half and three quarter barrels, as provided by United States law.

§ 117. Sale of cranberries in packages

It shall be lawful to use for the sale and delivery of cranberries packages containing one, two or four pounds of cranberries, net weight; provided, that said net weight is plainly stamped on the top or side of each package.

FARM PRODUCTS

§ 117A. Official grades and standards for farm products; use of brands or labels

The commissioner of food and agriculture, in this and the five following sections called the commissioner, may establish and promulgate official grades and standards for farm products, except apples, potatoes and milk, produced within the commonwealth for the purposes of sale, and may from time to time amend or modify such grades and standards. Before establishing, amending or modifying any such grades or standards the commissioner shall hold public hearings in such places within the commonwealth as he shall deem proper. Notice of such hearings shall be advertised in a newspaper or newspapers of general circulation within the county where the hearing is to be held for three successive weeks prior thereto, and shall specify the date and place of each hearing and that it is to be held for the purpose of obtaining information with a view to establishing grades or standards for such farm products, if deemed advisable. The commissioner may determine or design brands or labels for identifying such farm products packed in accordance with official grades and standards established as aforesaid, and may cause to be printed said brands or labels and may dispose of or cause the disposition of the same at reasonable prices. A written application to the commissioner requesting permission to use said brands or labels and a written authorization thereof by the commissioner or a duly authorized assistant shall be a condition precedent to the use of such brands or labels. The commissioner may revoke or suspend the right to use such brands or labels determined as aforesaid whenever it appears on investigation and after a subsequent hearing before said commissioner or authorized assistant that such brands or labels have been used to identify such farm products not in fact conforming to the grade or standard indicated.

Amended by St.1951, c. 600, § 1; St.1975, c. 706, § 153.

§ 117B. Establishment of grades or standards and determination of brands or labels; notice; publication

Upon the establishment of such grades or standards and upon the proper determination of brands or labels, all in accordance with the provisions of section one hundred and seventeen A, notice thereof shall be published for three successive weeks in three newspapers stating the grades and standards so established and the brands or labels so determined, and the date on which such establishment or determination is to take effect. The commissioner shall distribute information relative to the grades and standards so established and the brands or labels so determined.

§ 117C. Unlawful use of brands or labels; obstruction of commissioner

After notice of the establishment of grades and standards and the determination of brands or labels as provided in the two preceding sections, it shall be unlawful to use an official grade designation in connection with the sale of such farm products without using the brand or label determined as aforesaid for such grade and standard, or to use such a brand or label unless the farm product bearing the brand or label is in fact of the grade or standard so established, or to use such a brand or label before the authorization of the use of, or after the revocation or during suspension of the right to use, such brand or label, by the commissioner. Any violation of this section shall be punished for a first offence by a fine of not more than fifty dollars and for a subsequent offence by a fine of not more than two hundred dollars. Whoever obstructs or hinders the commissioner or any of his assistants in the performance of his duties under sections one hundred and seventeen A to one hundred and seventeen F, inclusive, shall be punished by a fine of not less than ten nor more than one hundred dollars.

§ 117D. Inspection of farm products; certification of quality and condition

The commissioner may employ inspectors to inspect such farm products marked, branded or labelled in accordance with official grades or standards established and promulgated by the commissioner, for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, standard, condition, and approximate quality of the farm products inspected and any other pertinent facts that the commissioner may require. Such a certificate and all federal certificates relative to the condition or quality of said farm products shall be prima facie evidence in all courts of the commonwealth of the facts required as aforesaid to be stated therein.

§ 117E. Rules and regulations

The commissioner may prescribe rules and regulations for carrying out the purposes of sections one hundred and seventeen A to one hundred and seventeen F, inclusive, including the fixing of fees for inspections.

§ 117F. Powers of commissioner of agriculture

The commissioner, in person or by deputy, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products marked, branded or labelled in accordance with official grades or standards established and promulgated by the commissioner are being marketed or held for commercial purposes. He shall also have power in person or by deputy to open any bags, crates, or other containers containing said farm products and examine the contents thereof, and may, upon tendering the market price, take samples therefrom.

POTATOES

§ 117G. Definitions

As used in sections one hundred and seventeen G to one hundred and seventeen L, inclusive, the following words and phrases shall have the following meanings:

"Grade" or "grades" shall mean the standards for potatoes established and promulgated by the commissioner of food and agriculture as herein provided as the official grades of potatoes for Massachusetts.

"Plainly and conspicuously" shall mean that the lettering used to furnish information required by law on containers shall be legible enough so as not to be obscured by other markings or illustrations used thereon. Printing or stamped terms shall be not less than three eighths of an inch in height.

Added by St.1951, c. 600, § 2. Amended by St.1975, c. 706, § 154.

§ 117H. Marking of container of potatoes; display of grade; application of section

Every container in which potatoes are packed, sold, distributed, offered or exposed for sale or distribution in the commonwealth shall be plainly and conspicuously marked by a tag, brand, label or stencil bearing the name and address of the packer, or the person by whose authority the potatoes are packed or distributed, and the proper grade of the potatoes contained therein. The person possessing the potatoes at any time shall be deemed responsible for the proper marking of the potatoes. On bulk displays in racks, bins or other receptacle from which potatoes are sold in retail quantities, the proper grade shall be plainly and conspicuously shown, but the provisions as to markings of name and address or person by whose authority the potatoes were packed shall not apply. Nothing in this section shall be construed to prevent a potato grower from selling potatoes at his premises or storage, or delivering potatoes to a central packing house, processing plant, or storage without such marking, except that any potatoes displayed or offered for sale at roadside stands, so called, shall be marked with the proper grade. The provisions of sections one hundred and seventeen G to one hundred and seventeen L, inclusive, shall not apply to properly tagged certified seed potatoes. All newspaper or display advertising of potatoes in which the price is stated shall also state the grade or grades of potatoes being advertised.

Every container in which frozen blanched potatoes are packed, sold, distributed, offered or exposed for sale for commercial purposes only and not intended for sale directly to the consumer shall be plainly and conspicuously marked by a tag, brand, label or stencil bearing the state of origin of the potatoes, the grade of the potatoes and a brief description of the manner in which such potatoes are blanched.

Added by St.1951, c. 600, § 2. Amended by St.1970, c. 229.

§ 117*I*. Official grades of potatoes; modification; notice; hearing; United States grades

The commissioner of food and agriculture, in this section and in sections one hundred and seventeen J and one hundred and seventeen K called the commissioner, shall establish and promulgate official grades of potatoes packed or repacked within the commonwealth and may from time to time amend or modify such grades. Before establishing, amending or modifying any such grades, the commissioner shall consult with growers and shippers of potatoes relative to proposed grades, or upon written petition of fifty or more commercial potato growers, the commissioner shall, after reasonable notice, specifying the date, place and purpose of the proposed hearing, hold a public hearing for the purpose of obtaining information with a view to establishing, amending or modifying such official grades. The grades so established and promulgated shall include grades identical in name and requirements with all grades or standards of potatoes as promulgated from time to time by the secretary of agriculture of the United States and commonly known as the United States grades.

Added by St.1951, c. 600, § 2. Amended by St.1975, c. 706, § 155.

§ 117J. Powers of commissioner; rules and regulations

The commissioner shall enforce the provisions of sections one hundred and seventeen G to one hundred and seventeen K, inclusive. He or a duly authorized representative, shall have free access, ingress and egress during business hours to any building or other place where potatoes are packed, stored, transported, sold, offered or exposed for sale or for transportation. He or a duly authorized representative may also, open any box, barrel or other container containing potatoes and examine the contents thereof, and may, upon tendering the market price, take samples therefrom. The commissioner shall make and publish uniform rules and regulations for carrying out the provisions of said sections one hundred and seventeen G to one hundred and seventeen L, inclusive.

Added by St.1951, c. 600, § 2.

§ 117K. Violations; notice; hearing

When the commissioner learns of any violation of any of the provisions of sections one hundred and seventeen G to one hundred and seventeen J, inclusive, he may cause notice thereof, together with a copy of his findings, to be given to the person or persons concerned. Persons so notified may be given a hearing under rules and regulations prescribed by the commissioner. Notice of such hearing shall specify the date, hour and place thereof.

Added by St.1951, c. 600, § 2.

§ 117L. Penalties

Any person violating any of the provisions of sections one hundred and seventeen G to one hundred and seventeen J, inclusive, shall be punished by a fine of not more than fifty dollars for the first offence and for each subsequent offence by a fine of not more than two hundred dollars. The act, omission or failure of an officer, agent or other person acting for or employed by a corporation, company, society or association within the scope of his employment or office shall be deemed to be the act, omission or failure of such corporation, company, society or association.

Added by St.1951, c. 600, § 2.

SLAUGHTER HOUSES

§ 118. Definitions for sections 118 to 131, inclusive

The following words as used in sections one hundred and eighteen to one hundred and thirty-one, inclusive, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

"Broker", any person engaged in the business of buying or selling livestock products or poultry products on commission, or otherwise negotiating purchases or sales of such articles other than for his own account or as an employee of another person.

"Capable of use as human food", any livestock or poultry carcass, or part of product of any such carcass, unless it is denatured or otherwise identified as required by regulations prescribed by the department to deter its use as human food, or it is naturally inedible by humans.

"Commissioner", the commissioner of public health or his duly authorized agent.

"Container" or "package", any box, can, tin, cloth, plastic, or other receptacle, wrapper, or cover.

"Department", the department of public health.

"Inspector", an employee or official of the division of food and drugs, authorized by the director to perform any inspectional function.

"Label", a display of written, printed, or graphic matter upon any article or container, not including package liners, of any article.

"Labeling", all labels and other written, printed, or graphic matter: (1) upon any article or any of its containers or wrappers; or, (2) accompanying such article.

"Livestock", any cattle, sheep, swine, goats, horses, mules, or other equines, whether live or dead.

"Livestock product", any carcass, part thereof, meat, or meat food product of any livestock.

"Meat food product", any product capable of use as food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, or goats, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner under such conditions as he may prescribe. These words as applied to food products of equines shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

"Official certificate", any certificate prescribed by regulations of the department for issuance by an inspector or other person performing official functions under this chapter.

"Official device", any device prescribed or authorized by the department for use in applying any official mark.

"Official establishment", any establishment as determined by the department at which inspection of the slaughter of livestock or poultry or the preparation of livestock products or poultry products is maintained under the authority of this chapter.

"Official inspection legend", any symbol prescribed by regulations of the department showing that an article was inspected and passed in accordance with this chapter.

"Official mark", the official inspection legend or any other symbol prescribed by regulations of the department to identify the status of any article or livestock or poultry under this chapter.

"Poultry", any domesticated bird, whether live or dead.

"Poultry product", any poultry carcass or part thereof; or any product which is made wholly or in part from any poultry carcass or part thereof, excepting products which contain poultry ingredients only in a relatively small proportion or historically have not been considered by consumers as products of the poultry food industry, and which are exempted by the commissioner from definition as a poultry product under such conditions as he may prescribe to assure that the poultry ingredients in such products are not adulterated and that such products are not represented as poultry products.

"Prepared" or "processed", slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed in any way.

"Shipping container", any container used or intended for use in shipping the product packed in another container.

"Renderer", means any person engaged in the business of rendering livestock or poultry carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

Added by St.1970, c. 891, § 1.

§ 119. Supervision and inspection; rules and regulations; suspension of license and closure

An official establishment or a person engaged in the business of slaughtering livestock or poultry or in the business of the preparation of such products shall be under the supervision of the department and subject to the inspection required by said department.

The commissioner may issue orders and said department shall establish, and may from time to time amend, modify, repeal or suspend, rules and regulations, including uniform minimum requirements for the maintenance and operation of said establishments and to otherwise implement the provisions of sections one hundred and eighteen to one hundred and twenty-seven, inclusive.

If any establishment licensed under section one hundred and twenty is deemed by the commissioner to be operated or maintained in an unsanitary manner, or in violation of any of said rules and regulations, or not properly constructed or equipped for said business of slaughtering or preparation, said commissioner shall close such establishment until such time as it has been put in proper condition, and the department may also suspend the licenses issued under section one hundred and twenty if the required changes are not made within a reasonable time.

Added by St.1970, c. 891, § 1.

§ 120. License; acting without; application; fee

No person shall engage in the slaughter of livestock or poultry unless he has obtained a license from the department. No person shall process or manufacture meat or meat food products, poultry or poultry products, in an establishment unless he has obtained a license from the department. Persons engaged in the business of slaughter or meat or meat food processing or poultry or poultry processing, shall apply annually for a license. Such application shall be signed and sworn to by one or more of the owners or persons carrying on such business or if a corporation, by an authorized officer thereof. Such person shall state the name and address of all owners or persons carrying on said business except in the case of a corporation, the names and addresses of the officers of such corporation, and the location of said establishment or such other information as the commissioner may require. The fee for a license issued by the department shall be twenty dollars.

Added by St.1970, c. 891, § 1.

§ 121. Suspension or revocation of license; hearing

Any license issued pursuant to section one hundred and twenty may be suspended or revoked if the licensee is in violation of any provision of sections one hundred and eighteen to one hundred and twenty-seven, inclusive, or the rules and regulations promulgated under the authority thereof, or any lawful order of the department or the commissioner. A hearing shall be held prior to the revocation, or within seven days after the suspension, of any such license, unless prior to the expiration of such period, said license has been restored. Such hearings shall be held before a hearings board within the department established in section one hundred and twenty-two.

Added by St.1970, c. 891, § 1.

§ 122. Hearings board; members; expenses; chairman; duties

There shall be a hearings board consisting of the commissioner, or at the discretion of the commissioner, the director of the division of food and drugs, and two persons to be appointed by the governor for a term of three years, one of whom shall be a representative of consumer interests, and one of whom shall be a representative of the meat or poultry industry. The appointive members shall serve without compensation, but shall be reimbursed for their necessary expenses incurred in connection with the discharge of their official duties. The commissioner, or the director of the division of food and drugs, shall act as chairman. The board shall conduct hearings relative to the suspension, revocation or restoration of any license granted under section one hundred and twenty, and after such hearing may by majority vote suspend, revoke or reinstate any such license. Notice and procedures shall, so far as may be applicable, be in accordance with chapter thirty A. The board may further prescribe proceedings before it by regulations which shall not be inconsistent with said chapter thirty A.

Added by St.1970, c. 891, § 1.

§ 123. Meat and poultry advisory board; members; term; meetings; expenses; duties

There shall be a board within the department, to be known as the meat and poultry advisory board consisting of seven members which shall be appointed by the governor, one of whom shall be a representative of each of the following: the Massachusetts Farm Bureau, the Massachusetts Health Officers Association, the New England Wholesale Meat Dealers Association, the Massachusetts Retail Grocers' Association, and the Consumers Council, and two members of whom shall be representatives of the State Labor Council, AFL-CIO. Two of said members shall be designated in their original appointments to serve for one year, two for two years, and three for three years. Upon the expiration of the term of a member, his successor shall be appointed in the manner aforesaid for three years.

Members of said advisory board shall serve without compensation, and shall meet quarterly and at other times at the discretion of the chairman. They shall receive their necessary travel and other expenses when engaged in the work of the board. The chairman of the board shall be designated by the governor from time to time. The commissioner shall designate an employee of the department to be secretary of said board.

The board shall: (*a*) Act entirely in an advisory capacity, except as provided in this section. A majority of the members of the board present and voting shall constitute the basis for an official action or recommendation of said board.

(*b*) Consider all matters submitted to it by the commissioner or the director of food and drugs.

(*c*) On its own initiative recommend to the department such rules and regulations and any changes thereon which the advisory board may deem important and necessary.

(*d*) Cooperate in the preparation of rules and regulations promulgated by the department.

Notice and procedures shall, so far as may be applicable, be in accordance with chapter thirty A. The board may further prescribe proceedings before it by regulations which shall not be inconsistent with said chapter.

Added by St.1970, c. 891, § 1.

§ 124. Inspection of livestock and poultry; seizure and destruction; reports; publication

An inspector may inspect livestock and poultry, the carcasses of all slaughtered animals and all meat and poultry or the products thereof, offered or exposed for sale or kept with intent to sell, and may enter any place where such livestock, poultry, carcasses or products are stored, kept, or exposed for sale and shall have access at all times, by day or night, to every part of every establishment required to have inspection under this chapter, whether the establishment is operated or not. If such carcasses or products are tainted, diseased, corrupted, decomposed, unwholesome, unfit for food from any cause or otherwise adulterated or misbranded, said inspector shall seize and may cause the same to be destroyed forthwith, or denatured and disposed of in accordance with such regulations as the department may prescribe. The inspector shall immediately notify the commissioner of any carcasses or products seized or condemned, stating the reasons for such seizure or condemnation and stating the name of the owner or person in whose possession it was found, and the disposition made of said carcass or product.

Reports shall be made by the inspector or other authorized person employed by the department, stating in detail the conditions observed and recommendations, if any, regarding such conditions. The consumers' council, upon request of its chairman, shall have access to such reports. Inspectors shall make inspections of all establishments licensed under the provisions of section one hundred and twenty. Reports of said inspections shall be made in quadruplicate and a case number assigned to each inspection shall be affixed thereto. A copy of each inspection report shall be given to the following:

(*a*) to the person whose establishment has been inspected;

(*b*) to the commissioner; and,

(*c*) to the director of the division of food and drugs; and,

(*d*) one is to be retained by the inspector making said report.

Complete records of all inspections, reports, complaints and enforcement actions shall be maintained and a summarized monthly list of all enforcement actions, detailing the business name, address, offense charged, and disposition of each such case shall be published by the department and a copy thereof furnished to the consumers' council.

Added by St.1970, c. 891, § 1.

§ 125. Inspections; quarantine; segregation, marking and labeling products; prohibiting products; sanitation regulations; required records

The department shall:—(*a*) require ante mortem and post mortem inspections, quarantine, segregation, and reinspections with respect to the slaughter of livestock and poultry and the preparation of livestock products and poultry products at all official establishments in the commonwealth;

(*b*) require the identification of livestock and poultry for inspection purposes and the marking and labeling of livestock products or poultry products or their containers or both as "Mass. D. P. H. Inspected and Passed" if the products are found upon inspection to be not adulterated and as "Mass. D. P. H. Inspected and Condemned" if they are found upon inspection to be adulterated and the destruction for food purposes of all such condemned products, each of the foregoing acts to be performed under the direct and immediate supervision of an inspector;

(*c*) prohibit the entry into official establishments of livestock products and poultry products not prepared under federal inspection or inspection pursuant to this chapter and further limit the entry of such articles and other materials into such establishments under such conditions as the department may prescribe;

(*d*) require that when livestock products and poultry products leave official establishments they shall bear directly thereon or on their containers, or both, as the department may require, all information required under the provisions of or by the authority of this chapter; and require approval of all labeling and containers to be used for such products when sold or transported to assure that they comply with the requirements of this chapter;

(*e*) investigate on a regular basis the sanitary conditions of each official establishment and withdraw or otherwise refuse to provide inspection service at any such establishment where the sanitary conditions are such as to render adulterated any livestock products or poultry products prepared or handled thereat;

(*f*) prescribe regulations relating to sanitation for all official establishments;

(*g*) require that the following classes of persons shall keep such records and for such periods as are specified in regulations which shall be promulgated by the department to fully and correctly disclose all transactions involved in their business, and afforded to the commissioner, access to such places of business, and opportunity, at all reasonable times, to examine the facilities, inventory and records thereof, to copy the records, and to take reasonable samples of the inventory upon payment of the fair market value therefor: any persons that engage (1) in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling as brokers, wholesalers or otherwise, transporting, or storing any livestock products or poultry products for human or animal food; or (2) in business as renderers or in the business of buying, selling or transporting any dead, dying, disabled or diseased livestock or poultry, or parts of the carcasses of any such animals including poultry that died otherwise than by slaughter.

Added by St.1970, c. 891, § 1.

§ 126. Duties of commissioner

(*a*) The commissioner shall:

(1) remove inspectors from any establishment that fails to destroy condemned products as required;

(2) refuse to provide inspection service under this chapter with respect to any official establishment for causes specified in section four hundred and one of the Federal Meat Inspection Act, as amended,[1] or section eighteen of the Federal Poultry Products Inspection Act, as amended; [2]

(3) refuse to provide inspection service under sections one hundred and eighteen to one hundred and twenty-eight, inclusive, with respect to any establishment for violation of provisions as set forth in said sections;

(4) order labeling and containers to be withheld from use if he determines that the labeling is false or misleading or the containers are of a misleading size or form;

(5) require that equines be slaughtered and prepared in establishments separate from establishments where other livestock are slaughtered or their products are prepared;

(6) require that persons subject to the provisions of sections one hundred and eighteen to one hundred and thirty, inclusive, furnish the department, on such form as the commissioner may prescribe, annual or special reports, or both such annual or special reports, or answers in writing to specific questions asked by the commissioner, or such other information as the commissioner may require to enforce the provisions of the said sections;

(7) cooperate with the Secretary of Agriculture in the administration of the provisions of this chapter in order to effectuate the purposes thereof, and to accept federal assistance for that purpose.

(*b*) The department shall:

(1) by regulations prescribe the sizes and style of type to be used for labeling information required under this chapter, and definitions and standards of identity or composition or standards of bill of container, consistent with federal standards, when it deems such action appropriate for the protection of the public and after consultation with the Secretary of Agriculture;

(2) by regulations prescribe conditions of storage and handling of livestock products and poultry products by persons engaged in the business of buying, selling, freezing, storing, or transporting such articles to assure that such articles will not be adulterated or misbranded when delivered to the consumer;

(3) by regulations require that every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouseman of livestock products or poultry products, or engaged in the business of buying, selling, or transporting in intrastate commerce, any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of any such animals including poultry that died otherwise than by slaughter shall register with the department his name and the address of each place of business at which and all trade names under which he conducts such business.

Added by St.1970, c. 891, § 1.

[1] 21 U.S.C.A. § 601 et seq.

[2] 21 U.S.C.A. § 451 et seq.

§ 127. Prohibited acts

(*a*) No person shall, with respect to any livestock or poultry or any livestock products or poultry products:

(1) slaughter any such animals or prepare any such articles which are capable of use as human food at any official establishment, except in compliance with the requirements of this chapter and any regulations thereunder promulgated;

(2) sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any such articles which are capable of use as human food, and are adulterated or misbranded at the time of such sale, transportation, offer for sale or transportation, or receipt for transportation; or any such articles required to be inspected under this chapter unless they have been so inspected and passed;

(3) do, with respect to any such articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing such articles to be adulterated or misbranded.

(*b*) No person shall buy, sell, transport, offer for sale or transportation, or receive for transportation: (1) any slaughtered poultry from which the blood, feathers, feet, head, or viscera have not been removed in accordance with regulations promulgated by the department except as may be authorized by such regulations:

(2) any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the department to show the kinds of animals from which they were derived;

(3) any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified as required by the regulations of the department or are naturally inedible by humans.

(*c*) No person engaged in the business of buying, selling, or transporting in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, shall buy, sell, transport, offer for sale or transportation, or receive for transportation, in such commerce, any dead, dying, disabled, or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, unless such transaction or transportation, is made in accordance with such regulations as the department shall prescribe to assure that such animals, or the unwholesome parts or products thereof, will be prevented from being used for human food purposes.

(*d*) No person shall: (1) cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the commissioner;

(2) forge any official device, mark, or certificate;

(3) without authorization from the commissioner use any official device, mark, or certificate, or simulation thereof, or alter, detach, deface, or destroy any official device, mark, or certificate;

(4) contrary to the regulations prescribed by the department, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(5) possess, without promptly notifying the commissioner or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label or any carcass of any animal, including poultry, or part or product thereof, bearing any counterfeit, simulated, forged, or improperly altered official mark;

(6) represent that any article has been inspected and passed, or exempted, under this chapter when, in fact, it has, respectively, not been so inspected and passed, or exempted;

(7) knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the department;

(8) fail to furnish the commissioner upon his request any record, report, answer, or information which may be required under the provisions of or under the authority of sections one hundred and eighteen to one hundred and thirty, inclusive, or knowingly make any omission or false statement in any such record, report, answer, or information.

Added by St.1970, c. 891, § 1.

§ 128. Failure to testify or to produce evidence; falsification of reports; penalties

(*a*) Any person who neglects or refuses to attend and testify or to answer any lawful inquiry, or to produce documentary evidence, if in his or its power to do so, in obedience to the lawful requirement of the commissioner, shall be punished by a fine of not less than one thousand dollars nor more than five thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment.

(*b*) Any person who makes, or causes to be made, any false entry or statement of act in any report required to be made under sections one hundred and eighteen to one hundred and thirty, inclusive, or who makes, or causes to be made, any false entry in any account, record, or memorandum kept by any person subject to sections one hundred and eighteen to one hundred and thirty, inclusive, or who neglects or fails to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda, of all facts and transactions appertaining to the business of such person or that shall wilfully remove out of the jurisdiction of this commonwealth, or mutilate, alter, or by any other means falsify any documentary evidence of any person subject to sections one hundred and eighteen to one hundred and thirty, inclusive, or who wilfully refuses to submit to the commissioner for the purpose of inspection and taking copies; and documentary evidence of any person subject to sections one hundred and eighteen to one hundred and thirty, inclusive, in his possession or within his control, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment for a term of not more than three years or by both such fine and imprisonment.

Added by St.1970, c. 891, § 1.

§ 129. Violations; penalties; jurisdiction

Any person who violates any provision of sections one hundred and eighteen to one hundred and twenty-eight, inclusive, or any regulation or order issued under the authority of said sections shall be punished by imprisonment for not more than one year or a fine of not more than three thousand dollars, or both such imprisonment and fine; except that any person who knowingly attempts to distribute in commerce an adulterated article or an unexempted article which has not been inspected under the provisions of this chapter, or who commits a violation which involves intent to defraud, shall be punished by imprisonment of not less than one year nor more than three years or a fine of not less than three thousand dollars and not more than ten thousand dollars, or both such imprisonment and fine.

The superior court in equity is vested with jurisdiction specifically to enforce, and to prevent and restrain violations of sections one hundred and eighteen to one hundred and twenty-eight, inclusive.

Added by St.1970, c. 891, § 1.

§ 130. Exempt operations

The commissioner may exempt the following types of operations from any provisions of sections one hundred and eighteen to one hundred and thirty-one, inclusive; (1) slaughtering and preparation by any person of livestock and poultry of his own raising exclusively for use by him and members of his household, and his nonpaying guests and employees, and (2) any other operations which the commissioner may determine would best be exempted to further the purposes of said sections, to the extent such exemptions conform to the Federal Meat Inspection Act, as amended,[1] and the Federal Poultry Products Inspection Act, as amended,[2] and any regulations thereunder.

Added by St.1970, c. 891, § 1.

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[1] 21 U.S.C.A. § 601 et seq.

[2] 21 U.S.C.A. § 451 et seq.

§ 131. Inspection, establishments under official United States inspection

Nothing in sections one hundred and eighteen to one hundred and thirty, inclusive, shall be construed so as to require or prohibit inspection by the department of any establishment under official inspection by the United States department of agriculture or any livestock or poultry or any livestock or poultry product under such official establishment.

Added by St.1970, c. 891, § 1.

§ 132. Severability of provisions

If any provision of sections one hundred and eighteen to one hundred and thirty-one, inclusive, is declared void or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder or the provisions promulgated thereunder and the applicability thereof to other persons and circumstances shall not be affected thereby.

Added by St.1970, c. 891, § 1.

§§ 133 to 139A. Repealed by St.1970, c. 891, § 1

§ 139B. Sale of dressed poultry slaughtered without commonwealth; inspection

All dressed poultry, including chickens, fowl, ducks, geese, pheasants and turkeys, slaughtered without the commonwealth shall, unless it has been inspected for wholesomeness by the United States Department of Agriculture, be deemed unfit for food, and shall not be sold or offered for sale.

Added by St.1956, c. 712, § 1.

§ 139C. Definitions

As used in this section and sections one hundred and thirty-nine D to one hundred and thirty-nine G, inclusive, the following words shall have the following meanings:

"Commissioner", the commissioner of public health.

"Slaughterer", any person regularly engaged in the business of (1) purchasing livestock for purposes of slaughter or (2) slaughtering livestock for the sale, by such person or others, of meat or meat products.

"Livestock", cattle, calves, sheep, swine, horses, mules, goats and any other animal which can or may be used in and for the preparation of meat or meat products, excluding poultry.

"Packer", any person engaged in the business of slaughtering, or of manufacturing or preparing meat or meat products for sale, either by such person or others; or of manufacturing or preparing livestock products for sale by such person or others.

"Stockyard", any place, establishment or facility conducted or operated for compensation or profit as a public market, consisting of pens, or other enclosures, and their appurtenances, for the handling, keeping and holding of livestock for the purpose of sale or shipment.

"Humane method", a method whereby the animal is rendered insensible to pain by mechanical, electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast or cut; or a method of slaughtering, including handling and other preparation for slaughtering, required by or used in connection with the ritual requirements of the Jewish faith or of any other religious faith, whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

Added by St.1960, c. 444, § 1. Amended by St.1962, c. 396, § 1.

§ 139D. Prohibited methods

No slaughterer, packer or stockyard operator shall shackle, hoist, or otherwise bring livestock into position for slaughter by any method which shall cause injury or pain, nor bleed or slaughter any livestock except by a humane method.

Added by St.1960, c. 444, § 1.

§ 139E. Administration of act; rules and regulations

The commissioner shall administer the provisions of sections one hundred and thirty-nine C to one hundred and thirty-nine G, inclusive. He shall promulgate and may from time to time revise rules and regulations which shall conform substantially to the rules and regulations promulgated by the secretary of the United States department of agriculture pursuant to the Federal Humane Slaughter Act of 1958 (Public Law 85–765; 72 Stat. 862);[1] provided, however, that the use of a manually operated hammer, sledge or poleax shall not be deemed a humane method of slaughter within the meaning of sections one hundred and thirty-nine C to one hundred and thirty-nine G, inclusive.

Added by St.1960, c. 444, § 1.

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[1] 7 U.S.C.A. § 1901 et seq.

§ 139F. Penalties

Any person who violates any provision of section one hundred and thirty-nine D or one hundred and thirty-nine E, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than sixty days, or both.

Added by St.1960, c. 444, § 1.

§ 139G. Ritual slaughter

Nothing in sections one hundred and thirty-nine C to one hundred and thirty-nine E, inclusive, shall prohibit, abridge, or in any way hinder the religious freedom of any person or group, and, in order to protect freedom of religion, ritual slaughter and the handling or other preparation of livestock for ritual slaughter shall be exempt from the provisions of said sections. In this section the term "ritual slaughter" means slaughter in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

Added by St.1960, c. 444, § 1.

WEIGHERS OF BEEF

§ 140. Appointment; oath

In each town where beef cattle are sold for the purpose of marketing or barrelling, the mayor or selectmen shall appoint one or more persons, conveniently situated in such town and not dealers in cattle, as weighers of beef. Each such weigher shall be sworn to the faithful performance of his duties.

§ 141. Fees

Fees for weighing cattle shall be paid by the vendor and shall be twenty cents for each of the first five cattle, fifteen cents for each of the second five, ten cents each from the eleventh to the twentieth, inclusive, and five cents for each above twenty; also twelve and one half cents for each certificate, which shall contain the weight of each of the cattle weighed for one person unless the vendor requests a division thereof.

SAUSAGES

§ 142. Adulteration of sausage or sausage meat

For the purposes of this and the following section, sausage or sausage meat shall be deemed to be adulterated:

First. If it contains any cereal or vegetable flour or any product thereof in excess of two per cent, except as authorized by section one hundred and forty-three A;

Second. If it contains any coloring matter, or any substance injurious or deleterious to health;

Third. If it contains water in excess of an amount sufficient to make the product palatable and to facilitate mixing and placing in casings;

Fourth. If it contains, except as casing, the organs of the thoracic and abdominal cavities or any part thereof, except hearts, tripe and liver;

Fifth. If it contains any diseased, contaminated, filthy or decomposed substance; or if it is manufactured, in whole or in part from, or contains a substance produced, stored, transported or kept in a way or manner that would render the article diseased, contaminated or unwholesome; or if it is the product of a diseased animal or the product of any animal which has died otherwise than by slaughter.

§ 143. Sale, etc., of sausages

No person shall manufacture, sell, or offer or expose for sale, sausages or sausage meat containing any material or substance which would render the same adulterated within the meaning of section one hundred and forty-two. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

§ 143A. Sale of vegetable sausages

Nothing in this chapter shall prevent the sale or the offering or exposing for sale of vegetable sausages as such, if such sausages contain not less than twenty per cent of vegetables or vegetable products and are otherwise made in conformity with the provisions of this chapter; provided, that such sausages are sold, offered or exposed for sale under their own distinctive name.

§ 143B. Manufacture of sausage in colored casing

Nothing in this chapter shall prohibit the manufacture of sausage contained in a colored casing, provided that the same is manufactured for sale and distribution outside the commonwealth, and is so sold and distributed.

Added by St.1956, c. 693.

§ 143C. Penalty for violation of section 143B

Whoever sells and distributes, or manufactures for sale and distribution, within the commonwealth sausage contained in a colored casing shall be punished by a fine of not more than five hundred dollars.

Added by St.1956, c. 693.

§§ 144, 145. Repealed by St.1973, c. 383

INSPECTION AND SALE OF MEAT, ETC.

§ 146. Inspection; seizure and condemnation; appeal; market limits

Each local board of health by themselves, their officers or agents, may inspect the carcasses of all slaughtered animals and all meat, fish, vegetables, produce, fruit or provisions of any kind found in their town, and all veal found, offered or exposed for sale or kept with intent to sell therein, and for such purpose may enter any place where such carcasses or articles are stored, kept or exposed for sale. If, in its opinion, said veal is that of a calf less than two weeks old when killed, or if on inspection it is found that said carcasses or articles are tainted, diseased, corrupted, decayed, unwholesome or unfit for food from any cause, the said board shall seize and cause the same to be destroyed forthwith or disposed of otherwise than for food. All money received by said board for property disposed of as aforesaid, after deducting the expenses of said seizure and disposal, shall be paid to the owner of such property. If said board seizes or condemns any such carcass or meat because infected with a contagious disease, it shall immediately give notice to the director of animal health stating the name of the owner or person in whose possession it was found, the nature of the disease and the disposition made of said meat or carcass.

Local boards of health, subject to the approval of the department of public health, may make and enforce reasonable rules and regulations as to the conditions under which all articles of food may be kept or exposed for sale, in order to prevent contamination thereof and injury to the public health. Before such a board of health submits such rules and regulations to said department for approval, said board shall hold a public hearing thereon, of which notice shall be given by publication for two successive weeks, the first publication to be at least fourteen days prior to the date of the hearing, in a newspaper published in such town. Any person affected by such rules and regulations, in the form in which they are presented to said department for approval, may appeal to said department for a further hearing, and said department shall not grant its approval to rules and regulations concerning which such an appeal has been taken until it has held a public hearing thereon, advertised in the manner above set forth. The department of public health may, from time to time, review such rules and regulations and if, in the opinion of the department such rules and regulations have become no longer practical or reasonable, the department may declare such rules and regulations null and void. The local boards of health may then revise the rules and regulations and submit the revision for approval to the department in the manner described above. No regulation adopted in accordance with this section shall be construed as preventing the exposure of food articles for sale at retail in the Boston "market limits", as defined in the ordinances of Boston, on Saturdays or on the day immediately preceding any holiday observed in Boston, but no area in said "market limits", where food articles on June sixth, nineteen hundred and fourteen, were not allowed to be exposed for sale at retail on these days, shall be occupied for the exposure of food articles without a permit from the board of health.

Amended by St.1934, c. 340, § 6; St.1943, c. 508, § 3; St.1952, c. 387; St.1975, c. 706, § 156.

§ 147. Regulations for inspection of meat

The department of public health may make regulations for the inspection of meat, which shall conform to the regulations of the United States bureau of animal industry for the inspection of meat for export and for interstate commerce.

§ 147A. Regulations for inspection of game, poultry, etc.

The department of public health may make regulations for the inspection of game, poultry, and other meat except that of cattle, sheep or swine, intended for sale or exchange for use as food, and as to the conditions under which such game, poultry and other meat may be handled, stored, sold or exchanged. Whoever violates any provision of such a regulation shall be punished by a fine of not more than fifty dollars.

§ 148. Penalties

Whoever violates any rule or regulation of a local board of health which is approved by the department of public health shall be punished by a fine of not more than one hundred dollars.

Failure to give a notice required by section one hundred and forty-six to be given by a board of health to the director of animal health shall be punished as provided in section twenty-eight of chapter one hundred and twenty-nine.

Amended by St.1934, c. 340, § 6A; St.1975, c. 706, § 157.

§ 149. Interference with officers and agents of local boards of health

Whoever prevents, obstructs or interferes with a local board of health, its officers or agents, in the performance of its duties as provided in section one hundred and forty-six, or hinders, obstructs or interferes with any inspection or examination by it or them, or secretes or removes any carcass, meat, fish, vegetables, fruit or provisions of any kind, for the purpose of preventing the inspection or examination of the same under sections one hundred and forty-six, one hundred and fifty to one hundred and fifty-three, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both.

§ 150. Sale of unwholesome food

Whoever, himself or by his agent, sells or offers for sale for food or drink any diseased animal or product thereof or any tainted, diseased, corrupt, decayed or unwholesome carcass, meat, vegetable, produce, fruit or provisions of any kind, except when packed in such a container that upon reasonable inspection the condition of the contents thereof cannot be ascertained, without making the condition of the thing sold or offered for sale fully known to the buyer, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

§ 150A. Exposing unwholesome food for sale

Whoever knowingly exposes for sale or has in possession with intent to sell, for food or drink, anything described in the preceding section shall be punished by a fine of not more than one hundred dollars, or by imprisonment for not more than sixty days, or both. This section shall not apply to a wholesale dealer who has in his possession fruit or vegetables in the original package with intent to disclose fully to the purchaser the partly decayed condition thereof.

§ 151. Sale of veal of calf less than two weeks old

Whoever kills or causes to be killed a calf when less than two weeks old, with intent to sell for food the veal thereof, or knowingly sells for food, offers or exposes for sale therefor, or has in his possession with intent to sell for food, the veal of a calf so killed shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both.

Amended by St.1943, c. 508, § 4.

§ 151A. Sale and serving of horse meat regulated

Whoever, himself or by his agent, sells or exposes or offers for sale in a retail store horse meat which does not have attached thereto in a conspicuous place a sign or label bearing in printed letters in a straight line of plain gothic type not less than one inch high the words "horse meat", and whoever serves horse meat or causes it to be served at any lunch counter or in any restaurant, hotel, boarding house, convalescent home, hospital or like place, to a guest, patron or patient thereof, without notifying said guest, patron or patient that horse meat is being served to him shall be punished by a fine of not less than ten nor more than fifty dollars.

Added by St.1948, c. 189. Amended by St.1953, c. 136.

§ 152. Publication of facts relating to condemnation of animal or property

The board of health of the town where any animal or property has been condemned under section one hundred and forty-six may cause a description of the place in which such condemned property was found, the name of each person in whose possession it was found and the name of each person convicted of an offence under the three preceding sections to be published in two newspapers published in the county where such property was found.

§ 152A. Licensing business of buying and selling poultry

No person shall engage regularly in the business of buying or selling poultry which is to be sold or used for food unless he has a license from the commissioner of food and agriculture, the fee for which shall not exceed two dollars, and has filed a surety bond with said commissioner in accordance with the provisions of section one hundred and fifty-two D. Such license shall expire on December thirty-first of the year or part thereof for which issued and may be revoked by the commissioner for cause and after a hearing. The commissioner may make suitable rules or regulations governing the issue of such licenses. The licensee shall affix or cause to be affixed to each vehicle used in the business of buying or selling poultry as aforesaid a certified copy of such license in which such vehicle shall be particularly described. The provisions of this section shall not require the licensing of any merchant who does not go from place to place buying or selling poultry nor of any producer.

The word "merchant", as used in this section, shall include any wholesaler, jobber, commission merchant or retailer dealing in poultry who has an established place of business.

The words "poultry sold or used for food" as used in this section are hereby defined to mean poultry raised to a marketable weight for meat purposes.

The word "producer" as used in this section means a person who raises poultry on land situated within the commonwealth.

Added by St.1934, c. 296. Amended by St.1935, c. 157, § 1; St.1949, c. 446, § 1; St.1955, c. 515, § 1; St.1975, c. 706, § 158.

§ 152B. Transportation of live poultry; bill of sale; memorandum

No person, other than a lawfully authorized common or contract carrier, shall transport live poultry in connection with the sale thereof, from place to place upon any public highway or road unless he has in his possession a bill of sale or memorandum signed by the vendor and containing the vendor's address, the date of sale, breed, weight, price and number of poultry, or such information as will particularly describe such poultry and establish the proper ownership thereof.

Added by St.1934, c. 296. Amended by St.1935, c. 157, § 2.

§ 152C. Penalties for violations of sections 152A and 152B

Whoever violates any provision of section one hundred and fifty-two A or one hundred and fifty-two B shall be punished, for a first offence, by a fine of not more than one hundred dollars and, for any subsequent offence, by a fine of not more than five hundred dollars or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment.

Added by St.1934, c. 296.

§ 152D. Application for license; statement of business; bond; default; claims, etc.

Before a license may be issued as provided in section one hundred and fifty-two A, the applicant for a license shall file with the commissioner of food and agriculture, hereinafter in this section called the commissioner, a statement of business done during the preceding calendar yar, and such other information as may be required by the commissioner on forms to be provided by him. The commissioner shall require the person applying for or holding such license, to file in his office a good and sufficient surety bond, executed by a surety company authorized to do business within this commonwealth. The amount of such bond shall be determined by the commissioner, and shall be conditioned upon the faithful compliance by the licensee with the provisions of this section, and upon the payment in accordance with the agreement or contract of all amounts due to producers for poultry delivered to or purchased by the licensee during the license year. The bond shall be satisfactory to and approved by the commissioner. Upon default by the licensee in any of the conditions of his bond, if there is reason to believe that the licensee owes for poultry purchased or received from producers, the commissioner shall give reasonable notice to all such producers to file verified claims with him, and may, if he deems it advisable, fix a limit of time within which such claims may be filed. The commissioner shall examine claims so filed and shall certify the amounts determined by him to be due thereon. The commissioner may bring an action upon the bond, and for the purpose of such action, the certificate determining the amount due shall be prima facie evidence of the facts therein stated. If the sum recovered in any such action is not sufficient to pay all claims finally determined, then it shall be divided pro rata among them. No suit or action against the surety on any such bond shall be brought unless a written claim shall have been filed within one year of the close of the license year in which the transaction complained of took place.

The licensee shall from time to time, when and as required by the commissioner, make and file with the commissioner a verified statement of his disbursements during a period to be prescribed by the commissioner, which shall contain the names of the producers from whom poultry was received or purchased by the licensee, and the amount due to the producers. If it appears from such statement, or from facts otherwise ascertained by the commissioner, that the security afforded by the bond to producers delivering or selling poultry to such licensee does not protect such producers to the extent intended by this section, the commissioner may require such licensee to give an additional bond in a form to be determined by the commissioner.

Added by St.1949, c. 446, § 2. Amended by St.1975, c. 706, § 159.

§ 152E. Contracts for raising and delivery of poultry

Any person, including a merchant, who contracts with a producer, both as defined in section one hundred and fifty-two A, for the raising and delivery of poultry whereby the producer shall, upon delivery of such poultry, receive a payment for the raising of such poultry, be subject to the provisions of sections one hundred and fifty-two A and one hundred and fifty-two D, and any contract made under this section shall be in a form approved by the commissioner of agriculture.

Added by St.1955, c. 515, § 2.

§ 152F. Applicability of sections 152A to 152G; powers of commissioner; contractual producers

The commissioner may determine in all cases the applicability of the provisions of sections one hundred and fifty-two A to one hundred and fifty-two G, inclusive, and may utilize the security or bonds solely in protection of the poultry producers including contractual producers, but excluding any interest of feed manufacturers or dealers, hatchery or other parties in interest deemed by him not to fall within the purview of the meaning of said sections.

"Contractual producers" shall mean poultry producers who raise poultry for meat under contract with the ultimate purchaser.

Added by St.1955, c. 515, § 2.

§ 152G. Investigations by commissioner, etc.

The commissioner or his duly authorized assistant may investigate the financial standing and past conduct of any person applying for or holding a license under section one hundred and fifty-two A or any transaction by him in connection with the operation of a poultry plant or business and in such investigation may examine the books of account or other documents or records of any applicant or licensee, and may take testimony therein under oath; but information relating to the general business of any applicant or licensee disclosed by such investigation and not relating to the purposes of this section shall be treated by the commissioner as confidential.

Added by St.1955, c. 515, § 2.

§ 153. Sale of poultry not dressed

Whoever knowingly sells or exposes for sale dead poultry, before it has been properly dressed by the removal of the crop and entrails if they contain food, shall be punished by a fine of not less than five nor more than fifty dollars. Each local board of health shall cause this section to be enforced in its town.

§ 153A. Penalties

Whoever himself or by his agent sells or offers for sale any meat or meat product to which has been added any sulphur dioxide or compound thereof, except beef sausage made of fresh beef and enclosed in casings, which contains sulphur dioxide or compound thereof not in excess of ⅒ of 1%, when calculated as anhydrous sodium sulphite, if contained in a package which has conspicuously labelled on the outside thereof in not less than eight point type the following:—"contains not more than ⅒ of 1% sodium sulphite," shall be punished by a fine of not less than fifteen nor more than one hundred dollars.

Added by St.1933, c. 116. Amended by St.1933, c. 311; St.1945, c. 165.

CANNED GOODS AND MOLASSES

§ 154. Labeling of canned goods; grade; quality

Canned articles of food shall not be offered for sale unless marked to indicate the grade or quality thereof and the name and address of the person who packed or sells them.

§ 155. Marking of canned soaked goods and molasses

All canned articles of food which have been prepared from dry products and have been soaked before canning shall be plainly marked by an adhesive label having on its face the word "soaked" in letters of legible type not smaller than two line pica. All cans, jugs and other packages containing molasses shall be plainly marked by an adhesive label having on its face in the English language in letters of the size and description aforesaid the name and address of the person who made and prepared the same together with the name and quality of the ingredients thereof.

§ 156. False stamping or labeling; wrongful use or display of word "kosher", etc.; enforcement

Whoever falsely stamps or labels any can, jar or other package containing fruit or food of any kind, or permits such stamping or labelling or violates either of the two preceding sections, or whoever sells or exposes for sale any meat or meat product or any food containing meat ingredients or prepared with meat substance or meat fat and falsely represents the same to be kosher or as having been prepared in accordance with the orthodox Hebrew religious requirements either by direct statements, orally or in writing, or by the display of the word "kosher" in any language or by the display of any sign or mark in simulation of such word, or by the display of any insignia, six-pointed star or any mark which might reasonably be calculated to deceive or lead a reasonable person to believe that a representation is being made that the food sold is kosher or prepared in accordance with the orthodox Hebrew religious requirements, or whoever sells or exposes for sale both kosher and non-kosher meat or meat products or food containing meat ingredients or prepared with meat substance or meat fat, and at the same time displays a sign on his door or window or anywhere in front of his place of business where such food products are sold bearing the word "kosher" in any language or any sign or mark in simulation of such word or of any insignia, six-pointed star or any mark which might reasonably be calculated to lead a reasonable person to believe that the food sold in such place is kosher or prepared in accordance with the orthodox Hebrew religious requirements, and who fails to display on his window-signs and all display advertising in block letters at least four inches in height "non-kosher food also sold here", shall be punished by a fine of not less than twenty-five nor more than five hundred dollars; and whoever knowingly sells such goods so falsely stamped or labelled shall be punished by a fine of not less than ten nor more than one hundred dollars.

This section shall be enforced by the department of public health, and for such purpose any person designated by it shall have the right to enter at any reasonable time during business hours upon premises where food represented to be kosher is sold or exposed for sale and inspect such food.

Amended by St.1960, c. 625.

ICE

§ 157. Sale of ice at retail

Whoever, being engaged in the business of selling ice at retail, and not engaged in the delivery of the same under a contract, refuses to sell from any place or vehicle engaged in the regular distribution of ice at retail a piece of ice at the fair value thereof to any person other than an ice dealer, shall, if such person tenders in payment therefor the amount of five cents or any multiple thereof not more than fifty cents in legal money of the United States, be punished by a fine of not more than one hundred dollars.

§ 158. Scales for vehicles used for retail delivery; list of current prices

A dealer in ice, who refuses or neglects to provide scales for each vehicle used by him for the retail delivery of ice, or who neglects to furnish to the sealer of weights and measures of each city or town in which he conducts business a list of the current prices of ice sold by him at retail, shall be punished by a fine of not more than fifty dollars.

§ 159. Posting of prices on vehicles; weighing ice

Whoever having charge of the retail delivery of ice from a vehicle neglects to keep conspicuously posted upon each side of the vehicle the current retail prices of ice sold by him, or refuses or neglects to sell the same by weight, or refuses to weigh the same upon request of the purchaser, shall be punished by a fine of not more than fifty dollars.

§ 160. Impure ice

The department of public health, upon written complaint of not less than twenty-five consumers of ice cut from any pond or stream and sold or held for sale, alleging that said ice is impure and injurious to health, after notice to the parties interested of the time and place appointed for the hearing, and after hearing said parties, may make such orders relative to the sale of said ice as in its judgment the public health requires.

§ 161. Enforcement of orders of department of public health

Orders made under the preceding section shall be served upon any person selling or offering for sale impure ice, and may be enforced in equity by the supreme judicial or superior court.

§ 162. Appeal from order

Whoever is aggrieved by any order made under section one hundred and sixty may appeal therefrom in the manner prescribed by section one hundred and forty-seven of chapter one hundred and eleven, and shall be subject to sections one hundred and forty-eight and one hundred and forty-nine of said chapter, and the court may award costs in its discretion.

VINEGAR

§ 163. Definition; adulteration

Vinegar is hereby defined as being the result of alcoholic and subsequent acetous fermentation of natural fruit juices or vegetable products. Vinegar shall contain no added or artificial coloring matter, and shall contain not less than four grams of acetic acid in each one hundred cubic centimeters. If vinegar contains any added or artificial coloring matter, or less than the required amount of acidity, or if it is other than the product of alcoholic and subsequent acetous fermentation of natural fruit juices or vegetable products, it shall be deemed to be adulterated.

§ 164. Examination of vinegar; methods; publication

The methods for the examination of vinegar shall be those adopted by the Association of Official Agricultural Chemists. When no such methods are applicable, such additional methods as are approved by the department of public health and published in its bulletin shall be employed.

§ 165. Containers used for sale of vinegar; marking; labeling

No manufacturer or producer of, or wholesale dealer in, vinegar shall, by himself or by his servant or agent, use a cask, barrel or other container for the sale, offering for sale, exchange or delivery of vinegar, or have such vinegar in possession in any cask, barrel or other container with intent to sell, offer for sale, exchange or deliver such vinegar therein, unless the container is plainly marked with the name and place of business of such manufacturer, producer or wholesale dealer, the kind of vinegar contained therein and the substances from which it is made and unless the following additional requirements as to the marking and labelling of the container are complied with:—If the vinegar is cider vinegar diluted to legal strength, the container shall be distinctly and conspicuously labelled, "Diluted to Legal Strength" or by other like words indicating such fact. Each compound, mixture or blend of vinegar shall be marked with the word "compound" or "mixture", together with a statement of its constituents and the percentage of each constituent. The principal label, including the word "compound" or "mixture", if used on vinegar in wooden packages, shall be in Roman letters not less than one inch high, properly spaced and in straight parallel lines with no more than two inches of space between each line. The marking of vinegar in other containers than wooden packages shall be governed by sections one hundred and eighty-six and one hundred and eighty-seven. Violation of any provision of this section shall be punished by a fine of not more than one hundred dollars. This section shall not apply to undiluted cider vinegar.

§ 166. Collection of samples of vinegar; analysis

The collection of samples of vinegar, as authorized by section three hundred and four, shall be made under the direction and supervision of the department of public health or by local boards of health. Samples may be purchased in the open market, and the stencillings, tags, brands or other markings upon the container shall be noted. Samples shall be divided into two substantially equal parts of at least sufficient volume to permit of a proper analysis as required by law, and at the time of the taking of the samples there shall be delivered to the owner or other person from whom the vinegar is taken one of the two above mentioned parts properly labelled with identifying marks and sealed with a seal, provided for that purpose, and a receipt therefor shall be given to the inspector or collector.

§ 167. Examination of samples; complaint for misbranding or adulteration; hearing

Samples of vinegar taken under authority of law shall be examined by the department of public health or by boards of health of towns. If it then appears that any sample is misbranded or adulterated, the department of public health, or the board of health of a town, as the case may be, need not cause formal complaint to be entered at once, but shall grant the opportunity for a hearing under section one hundred and eighty-nine.

§ 168. Imitation or counterfeit seal; possession; use; penalty

Whoever makes, causes to be made, uses or has in his possession, an imitation or counterfeit of a seal used by an inspector or other officer engaged in the inspection of vinegar, and whoever changes or tampers with a sample taken or sealed as provided in section one hundred and sixty-six, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

§ 169. Enforcement of penalties

Each officer or person whose duty it is to enforce the laws relating to food and milk, shall enforce the laws relating to vinegar, and all laws relating to food shall apply to vinegar so far as they are applicable.

§ 170. Manufacture or sale of deleterious vinegar; penalty

Each person who manufactures, offers or exposes for sale any vinegar found upon proper tests to contain any preparation of lead, copper, sulphuric acid or other ingredient injurious to health, shall be punished by a fine of not less than one hundred dollars.

§ 171. Sale, etc., of adulterated vinegar; penalty

Whoever himself or by his servant or agent sells, exchanges or delivers or has in his custody or possession with intent so to do, or exposes or offers for sale or exchange adulterated vinegar, or whoever labels, brands or sells as cider vinegar or as apple vinegar, any vinegar not the exclusive product of the alcoholic and subsequent acetous fermentation of the pure juice of fresh apples, shall be punished by a fine of not more than one hundred dollars.

CERTAIN STANDARDS

§ 172. Barrel and hogshead

The barrel shall contain thirty-one and one half gallons and the hogshead two barrels, except that barrels containing malt beverages shall contain thirty-one gallons and that with respect to such barrels and fractional parts thereof a variation or tolerance of three per cent over and under the standard capacity shall be permitted.

Amended by St.1939, c. 122.

§ 173. Repealed by St.1922, c. 355, § 8

§ 174. Cental

A cental or hundredweight shall be one hundred pounds.

§ 174A. Standard weights of containers for grain products

No person shall pack for sale, sell, offer or expose for sale in this commonwealth, except in containers of net avoirdupois weights of five, ten, twenty-five, fifty and one hundred pounds, and multiples of one hundred pounds, any of the following commodities:—wheat flour, self-rising wheat flour, phosphated wheat flour, bromated flour, enriched flour, enriched self-rising flour, enriched bromated flour, corn flour, corn meals, hominy and hominy grits; provided, that this section shall not apply to *(a)* the retailing of flours, meals, hominy and hominy grits direct to the consumer from bulk stock, or *(b)* the sale of flours and meals to commercial bakers or blenders or for export in containers of more than one hundred pounds, or *(c)* flours, meals, hominy and hominy grits packed in containers the net contents of which are less than three pounds, or *(d)* the exchange of wheat for flour by mills grinding for toll. Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five nor more than five hundred dollars.

Added by St.1945, c. 92, § 1. Amended by St.1946, c. 92.

§ 175. Repealed by St.1945, c. 92, § 2

SALES BY WEIGHT

§ 176. Weight; definition; tolerances or variations

"Weight" in a sale of commodities by weight shall mean the net weight of all commodities so sold; and contracts concerning such sales shall be so construed; provided, that in respect to commodities not intended for food or fuel reasonable tolerances or variations shall be permitted in accordance with established trade customs. Violation hereof shall be punished by a fine of not more than one hundred dollars.

§ 177. False or insufficient weight or measure; misrepresentation of weight, quantity, or price; penalties

Except as otherwise provided by section two hundred and forty-eight, whoever himself or by his servant or agent gives or attempts to give false or insufficient weight or measure, or inferentially misrepresents the weight or quantity of a commodity sold or delivered by weight or measure by stating a price without stating the weight or quantity of such commodity, such price being in fact greater than the price advertised for such commodity or mutually understood by both parties to be the price for a given weight or measure, or demands or accepts payment in excess of the regularly quoted selling price of a commodity sold or delivered by weight or measure, or misrepresents the price of any commodity or service sold, offered, exposed, or advertised for sale by weight, measure, or count or represents the price in any manner calculated or tending to mislead or in any way deceive a person, or takes or attempts to take more than the quantity he represents when, as the buyer, he furnishes the weights, measures or weighing or measuring device by means of which the amount of commodity is determined, shall be punished for the first offense by a fine of one hundred dollars, for the second offense by a fine of two hundred and fifty dollars, and for a subsequent offense by a fine of five hundred dollars.

Amended by St.1946, c. 176; St.1960, c. 243; St.1974, c. 115; St.1975, c. 390.

§ 178. Rules for weighing; certification; public weighers

Each public weigher of goods or commodities shall weigh them according to section one hundred and seventy-six, and shall certify accordingly; and for each refusal or neglect he shall forfeit not more than ten dollars. Each weigher of goods appointed by a town, and each weigher for hire or reward, shall be a public weigher hereunder.

§ 179. Repealed by St.1931, c. 426, § 11

§ 180. Jurisdiction of court; complaints and prosecutions

Complaints and prosecutions for violations of law relating to the use or giving of false or insufficient weight or measure may be commenced and prosecuted in a court having jurisdiction of the place to which the goods are shipped.

MARKING OF PACKAGES CONTAINING FOOD

§ 181. Net quantity of food packages; marking; application of section

Subject to the variations, tolerances and exemptions provided for by section one hundred and eighty-two, no person shall himself or by his agent or servant sell or offer for sale food in package form unless the net quantity of the contents is plainly and conspicuously marked on the outside of the package in terms of weight, measure or numerical count. No person shall himself or by his agent or servant sell or offer for sale at retail any meat, poultry or edible fish, except soft shell clams and oysters, in package form unless there is plainly and conspicuously marked on the outside of such package the price per pound of the contents and the total sales price. The first sentence of this section shall not apply to retail sales of food made from bulk if the quantity is weighed, measured or counted at the time of such sale by the retailer, nor to the sale of milk, cream or buttermilk in glass jars, as provided by section fifteen of chapter ninety-eight.

Any commodity put up or packaged in any manner in advance of sale at retail shall bear on the outside of the package a plain and conspicuous declaration of the identity and the net quantity of the contents. The declaration of identity shall identify such commodity by its common or usual name, description, generic term, or the like, unless such commodity may be easily identified through the wrapper or container. The declaration of quantity shall disclose the net quantity of the commodity. The term "net quantity" as used in this section shall mean the quantity of the commodity in the package, exclusive of wrappers and other material packed with such commodity, except that the declaration of quantity on an aerosol package shall disclose the net quantity of the commodity, including the propellant. The declaration of quantity shall be expressed in terms of such weight, measure or count, or a combination of such weight, measure or count, as are firmly established by general consumer usage and trade custom and convey accurate information relative to the quantity or amount of the commodity. If there is no established consumer usage and trade custom with respect to the terms used in such declaration of quantity, the declaration shall, if the commodity is solely liquid, be in terms of liquid measure; otherwise, in terms of weight, except that if a commodity is packaged in an aerosol container, the commodity, including the propellant, shall be in terms of weight, and if the commodity is cloth or yard goods, the declaration shall be in terms of linear measure.

The director of standards shall enforce this section and sections one hundred and eighty-two to one hundred and eighty-four, inclusive.

Amended by St.1939, c. 261, § 10; St.1960, c. 244; St.1965, c. 676; St.1968, c. 467, § 13.

§ 182. Variations, tolerances and exceptions; rules and regulations

The director of standards shall adopt the variations, tolerances and exemptions established, or hereafter established, by rules and regulations provided for by section three of the act of congress mentioned in section one hundred and ninety-two, with such further reasonable variations, tolerances and exemptions not covered by the rules and regulations by said section as he deems expedient.

Amended by St.1939, c. 261, § 11; St.1968, c. 467, § 14.

§ 183. Penalties

Whoever violates any provision of section one hundred and eighty-one shall for the first offence be punished by a fine of not less than ten nor more than fifty dollars, and for a subsequent offence by a fine of not less than twenty-five nor more than one hundred dollars.

§ 184. Hearing before prosecution; prosecution of guarantor

Prosecutions under the preceding section shall not be commenced until the party concerned is notified and given an opportunity to be heard before the director of standards. No dealer shall be prosecuted thereunder if he establishes a guaranty, signed by the wholesaler, jobber, manufacturer, dealer or other person residing in the United States, from whom he purchased such articles, that they are correctly marked or labelled under section one hundred and eighty-one, designating it, and containing the name and address of such vendor, but in that case such guarantor shall be liable to prosecution and to the penalties provided by section one hundred and eighty-three. If section one hundred and eighty-one has been violated and the guarantor is without the commonwealth, no action shall be brought, but the director of standards shall report the facts to the proper national authorities.

Amended by St.1939, c. 261, § 12; St.1968, c. 467, § 15.

§ 184A. Packages of proprietary or patent medicine or food containing drugs; labeling

Upon each package, bottle or other receptacle holding any proprietary or patent medicine, or proprietary or patent food preparation, containing alcohol, morphine, codeine, opium, heroin, chloroform,

cannabis indica, chloral hydrate or acetanilide, or any derivative or preparation of any such substance, there shall be a label upon which shall be printed, in type not smaller than eight point (brevier) capitals, a correct statement of the quantity or proportion of each of said substances therein contained; provided, that if the size of the package, bottle or other receptacle will not permit the use of such type, the size thereof may be reduced proportionately. Whoever manufactures, sells, or offers for sale any medicine or food preparation in violation of this section shall be punished by a fine of not less than five nor more than one hundred dollars; but no dealer shall be prosecuted hereunder if the article is marked as it was when purchased by him and he can establish a guaranty signed by the wholesaler, jobber or manufacturer, residing in this commonwealth, from whom he purchases such article, to the effect that the same is correctly marked as required by this section, designating it. Such guaranty, to afford protection, shall contain the names and addresses of the parties making the sale of such articles to such dealer.

ADULTERATION AND MISBRANDING OF FOOD AND DRUGS

§§ 185, 185A. Repealed by St.1921, c. 486, § 26; St.1937, c. 341, § 4

§ 186. Adulteration of drugs, foods, cosmetics and devices defined

For the purposes of this chapter, an article shall be deemed to be adulterated:—

In the case of a drug: First, if a drug sold under or by a name recognized in any official compendium differs from the standards of strength, quality or purity as determined by the test, if any, laid down in such official compendium at the time of investigation; provided, that no drug defined in an official compendium shall be deemed to be adulterated hereunder if the standard of strength, quality or purity thereof is plainly stated upon the bottle, box or other container thereof delivered to the customer, although such standard may differ from that determined by the test, if any, laid down in the official compendium.

For the purposes of sections one hundred and eighty-six to one hundred and ninety-five, inclusive, the term "official compendium" shall mean the official United States pharmacopoeia, the official homeopathic pharmacopoeia of the United States, the official national formulary, or any supplement to any of them. For the purposes of these sections the term "drug" shall also mean and include all medicines, preparations, substances and mixtures of substances intended to affect the structure or any function of the body of man or other animals.

Second, if its strength or purity falls below the professed standard or quality under which it is sold.

Third, if it consists in whole or in part of any filthy, putrid or decomposed substance.

Fourth, if it has been prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered injurious to health.

Fifth, if it bears or contains, for purposes of coloring only, a coal tar color other than one from a batch which has been certified in accordance with the provisions of the Federal Food, Drug and Cosmetic Act and amendments thereto.[1]

Sixth, if any substance has been mixed or packed therewith so as to reduce its strength, quality or purity, or if any substance has been substituted wholly or in part therefor.

In the case of food: First, if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

Second, (1) if it bears or contains, by reason of administration of any substance to the livestock or poultry or otherwise, any added poisonous or added deleterious substance;

(2) if it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of section 408 of the Federal Food, Drug and Cosmetic Act; [2]

(3) if it bears or contains any food additive which is unsafe within the meaning of section 409 of the Federal Food, Drug and Cosmetic Act; [3]

(4) if it bears or contains any color additive which is unsafe within the meaning of section 706 of the Federal Food, Drug and Cosmetic Act; [4] provided that an article which is not otherwise deemed adulterated under clause (2), (3) or (4) shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive in or on such article is prohibited by regulations of the department;

Third, if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthy, unwholesome or otherwise unfit for food;

Fourth, if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

Fifth, if it is, in whole or in part, the product of an animal, including poultry, which has died otherwise than by slaughtering;

Sixth, if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

Seventh, if it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug and Cosmetic Act;

Eighth, if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is; or

Ninth, if it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid, or decomposed substance; or

Tenth, if it falls below the standard of purity, quality or strength which it purports or is represented to possess.

In the case of a cosmetic: First if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the label thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows: to do so may cause blindness", and the label of which bears adequate directions for such preliminary testing. For the purposes of this paragraph, the word "label" shall include all written, printed or graphic matter upon any cosmetic article or any of its containers or wrappers or accompanying such article and, for the purposes of this paragraph and paragraph "Fifth" below, the words "hair dye" shall not include eyelash dyes or eyebrow dyes.

Second, if it consists in whole or in part of any filthy, putrid, or decomposed substance.

Third, if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

Fourth, if its container is composed, in whole or in part, of any poisonous or deleterious substance, which may render the contents injurious to health.

Fifth, if it is not a hair dye and it bears or contains a color other than one which has been approved for such use under the authority of the federal food, drug and cosmetic act and amendments thereto, with such restrictions as the food and drug administration of the United States has placed upon such use.

In the case of a device: First, if it consists in whole or in part of any filthy, putrid or decomposed substance.

Second, if it is prepared or held under insanitary conditions whereby it may be contaminated with filth or rendered injurious to health.

Third, if it bears or contains for purposes of coloring a color additive other than one which has been listed and certified in accordance with amended FDC Act Sec. 706(*b*).[5]

Fourth, if it is packed under insanitary conditions whereby it may be contaminated with filth or rendered injurious to health.

Fifth, if the container thereof is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

Amended by St.1948, c. 598, § 1; St.1961, c. 600, § 2; St.1963, c. 487, § 1; St.1970, c. 891, §§ 2, 3.

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[1] 21 U.S.C.A. § 301 et seq.

[2] 21 U.S.C.A. § 346a.

[3] 21 U.S.C.A. § 348.

[4] 21 U.S.C.A. § 376.

[5] 21 U.S.C.A. § 376(b).

§ 187. "Misbranding" term defined when applied to drugs, foods, cosmetics and devices; when not to be deemed adulterated, etc.

The term "misbranded" as used in this chapter shall apply to each drug, or article of food, or article which enters into the composition of food, the package or label of which bears any statement, design or device regarding such article or the ingredients or substance contained therein, which is false or misleading in any particular, and also to any food or drug product which is falsely branded as to the state or country where it was manufactured or produced.

For the purposes of said sections an article shall also be deemed to be misbranded:

In the case of a drug: First, if it is so designated by the United States Food and Drug Administration, or if it is an imitation of or offered for sale under the name of another article. The department of public health shall maintain lists of drugs so designated as misbranded which shall be made available to physicians and pharmacists.

Second, if the contents of the package as originally put up have been removed, in whole or in part, and other contents placed therein.

Third, if its package or wrapper bears or contains any false or misleading statement, design, or device regarding the curative or therapeutic effect of such article or of any of the ingredients or substances contained therein.

Fourth, if in package form it fails to bear a label containing the name and place of business of the manufacturer, packer or distributor.

Fifth, if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana, morphine, opium, paraldehyde, peyote or sulphonmethane; or any chemical derivative of any such substance, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Sixth, if it is a drug and is not designated solely by a name recognized in an official compendium, unless its label bears (1) the common or usual name of the drug, if such there be; and (2) in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid or any derivative or preparation of any such substances, contained therein; provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions may be established by regulations promulgated by the department of public health, which conform to the regulations promulgated under the Federal Food, Drug and Cosmetic Act [1] for the enforcement of federal law.

Seventh, if its label fails to bear adequate directions for use and such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health or against unsafe dosage or methods or duration of administration or application in such manner and form as are necessary for the protection of the users.

Eighth, if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

Ninth, if it is an unstable drug and does not bear upon its container a label stating a date beyond which it should not be used. The words "unstable drug", as used herein, shall mean an antibiotic drug or any other drug upon the container of which the manufacturer has placed a label bearing an expiration date by the use of such words as "not to be used after (specifying a date)" or similar language specifying a date after which the drug should not be used.

The labeling provisions of this section shall not apply to the compounding and dispensing of drugs on the oral or written prescription, as hereinafter defined, of a physician, dentist or veterinarian, except as above provided with respect to an unstable drug.

In the case of food: First, if its labeling is false or misleading in any particular;

Second, if it is offered for sale under the name of another food;

Third, if it is in imitation or semblance of any other food; provided, that this paragraph shall not apply to an imitation of a food for which a standard of quality or identity has been adopted under the provisions of section one hundred and ninety-two nor to an imitation of any other food for which no standard has been established by law or regulation, if its label bears in type of uniform size and prominence, the word "imitation", and immediately thereafter the name of the food imitated; and, provided further, that this paragraph shall not be construed to permit the imitation of any food for which a standard has been established by law, other than as specifically provided herein;

Fourth, if its container is so made, formed, or filled as to be misleading;

Fifth, if the package containing it or its label bears any statement, design or device regarding the ingredients or the substances contained therein which is false or misleading in any particular;

Sixth, if it is in package form and fails to bear a label showing (1) the name and place of business of the manufacturer, packer, or distributor;

(2) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided that reasonable variations may be permitted, and exemptions as to small packages may be established for food products by regulations prescribed by the department;

Seventh, if any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

Eighth, if it purports to be or is represented as a food for which a standard of quality has been prescribed by the department and its quality falls below such standard, unless its label bears a statement as to its true nature;

Ninth, if it purports to be or is represented as a food for which a definition and standard of identity or composition has been prescribed by the regulations of the department unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such food;

Tenth, if it purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations of the department and it falls below the standard of fill of container, applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

Eleventh, if it is not subject to the provision of paragraph Ninth unless its label bears (1) the common or usual name of the food in order of predominance, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each; provided that, to the extent that compliance with the requirements of this clause is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department;

Twelfth, if it purports to be or is represented for special dietary uses, its label bears such information concerning its vitamin, mineral and other dietary properties as the department determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses;

Thirteenth, if it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact: provided that, to the extent that compliance with the requirements of this chapter is impracticable, exemptions shall be established by regulations promulgated by the department;

Fourteenth, in the case of meat or meat food product or poultry or poultry products, if it fails to bear, directly thereon and on its containers, as the department may by regulations prescribe, the official inspection legend and establishment number of the establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the department may require in such regulations to assure that it will not have false or misleading labeling.

For the purposes of this section and section one hundred and eighty-seven A, the following terms shall have the following meanings:—

"Oral prescription", that prescription of a physician, dentist or veterinarian which has been verbally transmitted to a pharmacist by said physician, dentist or veterinarian or his expressly authorized representative and immediately recorded by said pharmacist on a regular prescription form, and which contains the name and address of the prescriber, and the name of the expressly authorized representative, if any, the date of the prescription, the name and amount of the drug prescribed, the serial number given to the prescription by the pharmacist dispensing the same, the name of the pharmacist receiving the prescription, the name of the patient unless a veterinary prescription, the directions for use and any cautionary statements if stated in the prescription, and the number of times to be refilled.

"Written prescription", that prescription which has been issued by a physician, dentist or veterinarian and bears the signature and address of the prescriber, the date of the prescription, the name and the amount of the drug prescribed, the name of the patient, directions for use, the number of times to be refilled, and any cautionary statements needed.

"Pharmacist", a person duly registered under chapter one hundred and twelve and actively engaged as a practitioner or employed in an established and licensed place of business for the sale, compounding and dispensing of drugs.

In the case of a cosmetic: First, if in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided,* That under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations promulgated by the department of public health.

Second, if any word, statement, or other information required by or under authority of this chapter to appear on the label is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the label) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Third, if its container is so made, formed, or filled as to be misleading.

The department of public health shall promulgate regulations exempting from any labeling requirement of this chapter cosmetics which are in accordance with the practices of the trade, to be processed, labeled, or repackaged in substantial quantities at establishments other than those where originally processed or packaged, on condition that such cosmetics are not adulterated or misbranded under the provisions of this chapter upon removal from such processing, labelling, or repackaging establishment.

In the case of a device: First, if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended or suggested in the labeling thereof.

Second, if it is in package form and it does not bear a label containing the name and place of business of the manufacturer, packer or distributor.

Third, if it is in package form and it does not bear a label containing an accurate statement of the quantity of the contents in terms of weight, measure or numerical count. Reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations.

Fourth, if the labeling thereof does not bear adequate directions for use, provided that where the requirement as applied to any device is not necessary for the protection of the public health, the commissioner shall promulgate regulations exempting such drug or device from such requirement.

Fifth, if the labeling thereof does not bear such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users.

Sixth, if any word, statement or other information required to appear on the label or labeling thereof is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

Amended by St.1948, c. 598, § 2; St.1954, c. 577, §§ 1, 2; St.1957, c. 284; St.1961, c. 600, § 3; St.1970, c. 891, §§ 4, 5; St.1972, c. 427.

[1] 21 U.S.C.A. § 301 et seq.

§§ 187A to 187C. Repealed by St.1971, c. 1071, § 2

§ 187D. Evasion of sections 186, 187 and 188 to 195; penalties

Whoever for the purpose of evading or assisting in the evasion of any provision of sections one hundred and eighty-six, one hundred and eighty-seven, one hundred and eighty-eight to one hundred and ninety-five, inclusive, falsely represents that he is a physician, dentist, podiatrist or veterinarian, or that he is a manufacturer or jobber in drugs, or a licensed wholesale druggist, or that he is a pharmacist actively engaged in the business as such, or that he is a superintendent or official in immediate charge of an incorporated hospital, college or scientific institution shall be punished by a fine of not more than one thousand dollars or by imprisonment in a jail or house of correction for not more than two years or both.

Added by St.1955, c. 718, § 2. Amended by St.1965, c. 229, § 5; St.1970, c. 345; St.1970, c. 443, § 8; St.1971, c. 1071, § 5.

§§ 187E to 187H. Repealed by St.1971, c. 1071, § 2

§ 188. Samples of food; collection; purchase

The collection of samples under sections one hundred and eighty-six to one hundred and ninety-five, inclusive, and three hundred and four may be made by authorized agents of the department of public health or of boards of health of towns. Samples may be purchased in the open market, and if in bulk and the sample is taken from the original package, carton, wrapper or other container in the presence of such authorized agent, the marks, brands or tags upon such container, and the accompanying printed or written matter shall be noted by such agent, who shall also note the name of the vendor by whom the sale was made, together with the date of the purchase. If practicable, samples shall be collected in duplicate, or divided into two substantially equal parts, and each part shall be labelled with identifying marks. One of such parts or samples shall be delivered to the person from whom they were taken, or, if a guaranty has been given, such part or sample shall be sent to the guarantor. The other part or sample shall be sent to the laboratory of the department or board taking the sample, if said board maintains a laboratory. Parts of samples divided as hereinbefore provided shall be sealed by said agent, at the time of the taking thereof, as provided by the regulations of the department of public health, with a seal provided for that purpose. Whenever it is impracticable either to collect more than one sample or to divide the same, such sample shall be sent to the laboratory of the department or board taking the sample, if said board maintains a laboratory.

§ 189. Examination of samples, by whom made, etc.; complaints

Examination of samples of food, drugs, cosmetics and devices, in order to determine by analysis or test whether such articles are adulterated or misbranded within the meaning of section one hundred and eighty-six to one hundred and ninety-five, inclusive, shall be made under the direction and supervision of the department taking such samples as provided in the preceding section; and if it shall appear from such examination that any of the samples are so adulterated or misbranded, the commissioner of public health need not cause formal complaint to be entered at once, but shall in the case of misbranding, and may in the case of adulteration, cause reasonable notice thereof, together with a copy of the results of such analysis or test, to be given to the party from whom the sample was obtained or to the party believed to be responsible for the condition of the sample, to the guarantor, if any, and to the party, if any, whose name appears upon the label as manufacturer, packer, producer, wholesaler, retailer or other dealer. Before any formal complaint is entered, any person so notified shall be given an opportunity to be heard before any person designated by the commissioner of public health, under such rules and regulations as the department of public health prescribes. Such notice shall specify the date, hour and place of hearing, and the parties interested therein may appear in person or by attorney. If it is decided that the party whose name appears upon the label, or the guarantor, shall be notified, and such party or guarantor resides without the commonwealth, the notice shall be sent by mail to such address as, with due diligence, may be obtained. If after such opportunity to be heard it appears that any provision of sections one hundred and eighty-six to one hundred and ninety-five, inclusive, has been violated the commissioner of public health may make or authorize to be made a formal complaint to a court or justice having jurisdiction in such cases, but no evidence of the result of such analysis or test shall be received if the agent described in the preceding section has refused or neglected to seal and deliver the sample, or part thereof, if and as required in the preceding section. In the case of food, local boards of health shall have the same authority as the commissioner of public health.

Amended by St.1948, c. 598, § 4; St.1961, c. 600, § 4.

§ 189A. Proceedings when food, drugs, cosmetics or devices suspected of being adulterated or misbranded; penalty

Whenever the commissioner of public health or his duly authorized agent finds or has probable cause to believe based upon inspection or chemical, bacteriological or physical examination, that any food, drug, cosmetic or device is adulterated or misbranded, he shall affix or cause to be affixed to such article a tag or other appropriate marking, giving notice that such article is or is suspected of being adulterated or misbranded and has been detained or embargoed for a period of ten days in the case of food and for a period of fifteen days in the case of drugs, cosmetics or devices, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by said commissioner, his agent, or the court; provided, any such article may at the discretion of the manufacturer or claimant be removed from public display but shall not be removed from the immediate premises. The claimant shall be authorized to destroy the article so detained if such article is destroyed under the supervision of an agent of said commissioner. When an article detained or embargoed has been found to be adulterated or misbranded, the commissioner or said agent shall within five days thereafter file a petition in any district or municipal court within whose jurisdiction the article is detained or embargoed for a libel of condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded he shall remove the tag or other marking, thereby permitting its release. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall after entry of the decree be destroyed at the expense of the claimant thereof under the supervision of such agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court after entry of the decree and a good and sufficient bond conditioned that such articles shall be so labeled or processed has been executed by the claimant, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of said commissioner. Such bond shall be returned to the claimant of the article on representation to the court by the commissioner of public health that the article is no longer in violation of the law. Whoever removes or disposes of an article of food, drug, cosmetic or device, which has been detained or embargoed as provided herein without permission for such removal or disposal by said commissioner, his agent or the court shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not more than six months.

Added by St.1948, c. 598, § 5. Amended by St.1961, c. 600, § 5.

§ 190. Penalty on manufacturer, etc.

Whoever manufactures, delivers, or offers to deliver, any article of food or any drug, cosmetic or device which is adulterated or misbranded within the meaning of sections one hundred and eighty-six and one hundred and eighty-seven, or any article of food, or any drug or device, which does not comply with the rules, regulations or standards, or any cosmetic which does not comply with the rules and regulations provided in sections one hundred and eighty-six to one hundred and ninety-five, inclusive, shall be punished: for a first offense, by a fine of not more than two hundred dollars; for a second offense, by a fine of not less than two hundred dollars nor more than one thousand dollars; and for a third or subsequent offense, by a fine of not less than one thousand dollars or by imprisonment for not more than six months or by both such fine and imprisonment.

Notwithstanding any provision of this chapter, no person shall have in his possession in his place of business an article of food which is adulterated as set forth in section one hundred and eighty-six unless said article is contained in a receptacle which clearly labels it as inedible and such other labeling as the commissioner may require.

Amended by St.1961, c. 600, § 6; St.1970, c. 891, § 6.

§ 191. Repealed by St.1970, c. 891, § 6

§ 192. Rules and regulations

The department of public health shall enforce sections one hundred and eighty-six to one hundred and ninety-five, inclusive. Local boards of health shall enforce only sections one hundred and eighty-six to one hundred and ninety-five, inclusive, as they pertain to food. Said department, after a public hearing, shall adopt and promulgate rules and regulations consistent with said sections, and, except as to standards fixed by law, may adopt standards, tolerances and definitions of purity or quality or identity for articles of food, drugs or devices, and may adopt rules and regulations consistent with said section for cosmetics. Such standards, tolerances and definitions shall conform to the standards, tolerances and definitions, if any, of purity or quality or identity adopted or that may hereafter be adopted for the enforcement of the federal food, drug and cosmetic act, approved June twenty-fifth, nineteen hundred and thirty-eight (Title 21, USC 301 et seq., 52 Stat. 1040 et seq.), or now or hereafter adopted for the enforcement of federal law.

Amended by St.1948, c. 598, § 6; St.1961, c. 600, § 8.

§ 193. Prosecutions in certain cases forbidden; guaranty for protection; rules and regulations

Except as provided in section one hundred and ninety-four, no dealer shall be prosecuted under sections one hundred and eighty-six to one hundred and ninety-five, inclusive, for selling or offering for sale any article of food, drug, cosmetic or device, in the original, unbroken package in which it was received by him if he can establish a guaranty by the wholesaler, jobber, manufacturer or other person residing in the commonwealth from whom he purchased the article to the effect that the same is not adulterated or misbranded within the meaning of the laws of this commonwealth or the Federal Food, Drug and Cosmetic Act,[1] or by the wholesaler, jobber, manufacturer or other person residing without the commonwealth to the effect that the same is not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act. Such guaranty, to afford protection, shall contain the name and address of the person making the sale of this article to the dealer, and in that case such person shall be amenable to the prosecutions, fines and other penalties which would attach in due course to the dealer under sections one hundred and eighty-six to one hundred and ninety-five, inclusive. If it shall appear that any provision of said sections has been violated, and the party giving said guaranty is without the commonwealth, no action shall be brought except as is provided therein, but the department of public health or the local board taking the sample shall present the facts to the proper national authorities for their action. The provisions of this section shall not apply in the case of a food, drug, cosmetic or device, subject to deterioration if the court finds that the adulteration has occurred after delivery to, and has resulted from negligence on the part of, the dealer.

Under the authority given by section one hundred and ninety-two the department of public health shall adopt rules and regulations which shall be observed by the said department and by local boards of health in ascertaining whether there is such a guaranty which may be relied upon by the dealer.

Amended by St.1948, c. 598, § 7; St.1961, c. 600, § 9.

[1] 21 U.S.C.A. § 301 et seq.

§ 194. Dealer establishing guaranty may be prosecuted, when

After a sample of an article of food, drug, cosmetic or device, which is adulterated or misbranded has been taken from a person who establishes a guaranty, as provided in the preceding section, and the guarantor resides without the commonwealth, the dealer may nevertheless be prosecuted for a subsequent sale of such adulterated or misbranded articles; provided, that the department of public health or local board which took the sample has presented the facts to the proper national authorities for their action, that the person from whom the sample was taken has been notified by said department or board that the facts have so been presented, and that such person continues to sell such articles after he has been notified by said department or board as to the particulars of the adulteration or misbranding and warned to desist from further sales or distribution of the article. Upon conviction in any such case the penalties provided in section one hundred and ninety-one may be imposed.

In case of adulteration, if the department of public health or a board of health in a city having a population exceeding one hundred thousand, finds that the same when analyzed is plainly a gross violation of any of sections one hundred and eighty-six to one hundred and ninety-five, inclusive, or that the article is distinctly injurious to the health of the community, even though the case has not as yet been adjudicated, said department may cause notice of these facts to be published in its monthly bulletin and in such other ways as it establishes by rules and regulations; provided, that the guarantor has been notified and has been afforded an opportunity to be heard as provided in section one hundred and eighty-nine. Said notice shall contain a warning to all dealers to desist from further sale or distribution of such article. Whoever sells such article after said notice and warning shall be amenable, for each subsequent sale, to the penalties provided in section one hundred and ninety-one.

Amended by St.1961, c. 600, § 10.

§ 194A. Adulterated shellfish; prosecution; defenses

In any prosecution in which it is alleged that the defendant for pay or otherwise delivered or offered to deliver to any person shellfish which are adulterated within the meaning of clause sixth of section one hundred and eighty-six, or however otherwise the offence may be described, it shall be a defense if the defendant shows that such shellfish were taken from an area not designated as contaminated by the department of public health or have passed a shellfish treatment plant approved by said department unless it appears from all the evidence that he knew or ought to have known of such adulteration or that he caused or contributed to the same.

§ 194B. Food fish products; labeling as "halibut"; penalty

Whoever labels or offers for sale any food fish product designated as "halibut", with or without additional descriptive words, which is not of the species Hippoglossus Hippoglossus or Hippoglossus Stenolepsis shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

Added by St.1968, c. 525, § 1.

§ 195. Construction and enforcement of sections 186 to 195

When construing and enforcing sections one hundred and eighty-six to one hundred and ninety-five, inclusive, the act, omission or failure of any officer, agent or other individual acting for or employed by any individual, corporation, company, society or association within the scope of his employment or office, shall in each case be also deemed to be the act, omission or failure of such corporation, company, society or association as well as that of the individual.

§ 196. Repealed by St.1948, c. 598, § 8

SALE AND DISTRIBUTION OF NARCOTIC DRUGS

§§ 197 to 217E. Repealed by St.1971, c. 1071, § 2

GRAIN AND MEAL

§ 218. Repealed by St.1922, c. 355, § 8

§ 219. Weighers of grain

Mayors and selectmen shall annually appoint one or more weighers of grain, who shall be sworn to the faithful performance of their duty; and if only one is appointed by them, they may authorize him to appoint deputy weighers.

§ 220. Repealed by St.1922, c. 355, § 8

§ 221. Fees of weighers

The fees of weighers of grain and their deputies, if any are authorized, shall be prescribed by the aldermen or selectmen of the several towns where they are appointed. One half of such fee shall be paid by the seller and one half by the purchaser.

§ 222. Certificate of sale by cental

If any wheat, corn, rye, oats, barley, buckwheat, cracked corn, ground corn or corn meal, ground rye or rye meal, or feed, or any other meal, is sold by the cental or hundredweight, the weigher or his deputy, on request of either party to the contract, shall ascertain the weight thereof and shall give a certificate of the number of centals or hundredweight of the same; and whoever sells and delivers a quantity of either of said articles exceeding one cental or hundredweight, if it has not been weighed by such weigher or his deputy, shall forfeit to the purchaser ten dollars for each lot purporting to be a cental or hundredweight which contains less than one hundred pounds.

§ 223. Repealed by St.1922, c. 355, § 8

§ 224. False weights, scales, etc.; false and fraudulent certificate; collusion

If a weigher or deputy weigher uses, or has in his possession with intent to use, for the purposes provided in sections two hundred and nineteen to two hundred and twenty-two, inclusive, any false weight, scale, balance or other instrument for weighing, or colludes with the purchaser or seller with intent to defraud the other party, or makes and utters a false and fraudulent certificate under sections two hundred and nineteen to two hundred and twenty-two, inclusive, he may be removed from office by the aldermen or selectmen, and shall also on conviction thereof be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

COMMERCIAL FEEDING STUFF

§ 225. Tag or label affixed to commercial feeding stuff; form and content

Each package, lot or parcel of commercial feeding stuff sold or offered, exposed or kept for sale or distributed shall have affixed thereto in a conspicuous place, as provided in the following section, a tag or label containing a legible and plainly printed statement in the English language clearly and truly certifying:

(*a*) The weight of the contents of the package, lot or parcel;

(*b*) The name, brand or trade mark;

(*c*) The name and principal address of the manufacturer or person responsible for placing the commodity on the market;

(*d*) The minimum per cent of crude protein;

(*e*) The minimum per cent of crude fat;

(*f*) The maximum per cent of crude fibre;

(*g*) The specific name of each ingredient used in its manufacture.

If such a tag or label contains any claim of one or more dietary factors other than those herein specified, such tag or label shall bear a legible and plainly printed statement in the English language guaranteeing such claim.

Amended by St.1939, c. 69.

§ 226. Tags or labels affixed to packages of commercial feeding stuff offered for sale

When any feeding stuff is sold or offered, exposed or kept for sale or distributed in packages, the tag or label shall be affixed in a conspicuous place on the outside thereof. When any feeding stuff is offered, exposed or kept for sale in bulk, the tag or label shall be affixed in a conspicuous place on the bin or other enclosure where the feeding stuff is contained, but need not state the number of pounds thereof. When any feeding stuff is sold or distributed in bulk the tag or label shall be affixed in a conspicuous place on the vehicle in which the feeding stuff is shipped, delivered or distributed and shall state the number of pounds thereof. When any feeding stuff is sold in packages furnished by the purchaser the seller shall furnish the tags or labels therefor. The provisions required by the preceding section to be printed on the tag or label relating to the constituents contained in any commercial feeding stuff shall be known and recognized as the guaranteed analysis of such feeding stuff.

§ 227. Filing copy of tag or label with commissioner; fee

No manufacturer, importer or other person shall sell or offer, expose or keep for sale or distribute any commercial feeding stuff, until he has filed with the commissioner or his authorized deputy for registration, a copy certified by him to be a true copy of the tag or label required by the two preceding sections, excepting the item as to the number of pounds, for each brand of feeding stuff to be sold or offered, exposed or kept for sale or distributed and has paid to said commissioner or his authorized deputy a registration fee of twenty dollars for each such brand. No agent or other person shall be obliged to file a copy of the tag or label of, or pay a registration fee for, any brand of feeding stuff, for which a copy of the tag or label has been filed and the registration fee paid by the manufacturer or importer of such brand and for which a certificate of registration has been issued.

Amended by St.1971, c. 795, § 2.

§ 228. Filing certified copy of tag or label for registration; fee

A certified copy of the tag or label required by any provision of sections two hundred and twenty-five to two hundred and thirty-five, inclusive, shall be filed for registration with the commissioner or his authorized deputy, and said registration fee paid to him, prior to January first in each year for each brand of commercial feeding stuff to be sold or offered, exposed or kept for sale or distributed during the year beginning with said January first. The commissioner or his authorized deputy may thereafter permit a manufacturer, importer or other person to file a copy of the tag or label of a brand of feeding stuff, and, upon payment to him of said registration fee, may register the same for said year in accordance with the rules and regulations which are prescribed by the commissioner.

Amended by St.1971, c. 795, § 3.

§ 229. Registration of tag or label; certificate of registration; disposition of fees

When the certified copy of the tag or label of any brand of commercial feeding stuff has been filed as provided in the two preceding sections and said registration fee has been paid, the commissioner or his authorized deputy shall register such tag or label if he finds the same to be in accordance with the requirements of sections two hundred and twenty-five to two hundred and thirty-five, inclusive, and shall issue, or cause to be issued, a certificate of such registration. The certificate shall authorize the sale of the brand of feeding stuff for which it is issued, up to and including December thirty-first of the year for which it is issued. All registration fees received under this and the preceding section by the commissioner or his authorized deputy shall be paid to the commonwealth.

Amended by St.1971, c. 795, § 4.

§ 230. Misleading or deceptive names, brands or trade marks

The commissioner or his authorized deputy may refuse to register any commercial feeding stuff under a name, brand or trade mark which, in his opinion, would be misleading or deceptive, or which would tend to mislead or deceive as to the materials of which the feeding stuff is composed. He may refuse to register more than one feeding stuff under the same name or brand, or to register any feeding stuff under a name or brand to the use of which the applicant for registration is not lawfully entitled. If any feeding stuff is registered and it is afterward discovered that any provision of sections two hundred and twenty-five to two hundred and thirty-five, inclusive, was violated in obtaining such registration or that such registration is in any respect in violation of any provision thereof, the commissioner or his authorized deputy may cancel such registration and the certificate issued therefor. No person shall sell or offer or expose or keep for sale or distribute any commercial feeding stuff, registration whereof has been cancelled by the commissioner or by his authorized deputy.

Amended by St.1971, c. 795, § 5.

§ 231. Analysis of commercial feeding stuff and cattle feed

Each commercial feeding stuff and cattle feed, or brand thereof, sold or offered, exposed or kept for sale or distributed shall be subject to analysis by the commissioner or by his duly authorized deputy, and the said commissioner shall make or cause to be made in each year one or more analyses of each brand of feeding stuff sold or offered, exposed or kept for sale or distributed, and he or his deputy shall have free access to each place of business, mill, building, vehicle, vessel and other receptacle used in the manufacture, sale, storage or delivery of any feeding stuff or cattle feed, or in the importation or transportation of any feeding stuff or cattle feed for sale or distribution in the commonwealth. He or his deputy may open any receptacle containing or supposed to contain any feeding stuff or cattle feed for sale or distribution as aforesaid and may take samples for analysis. The methods of making analyses of all feeding stuffs and cattle feeds shall be those in force by the Association of Official Agricultural Chemists of North America.

Amended by St.1971, c. 795, § 6.

§ 231A. Methods for collection and delivery of samples for analysis pursuant to section 231

Samples for analysis as stipulated in section two hundred and thirty-one shall be collected by the commissioner or his duly authorized deputy and shall be delivered to the Massachusetts agricultural experiment station of the university of Massachusetts for analyses according to methods approved by the Association of Official Agricultural Chemists of North America.

Added by St.1971, c. 795, § 7.

§ 232. Results of analysis; publication; free analysis

The commissioner may publish or cause to be published in reports, bulletins, special circulars or otherwise the results obtained by such analyses, and said reports, bulletins, circulars or other publications may contain such additional information in relation to the character, composition, value and use of the feeding stuffs or cattle feed analyzed as he may include. The said commissioner may at any time make or cause to be made for consumers a free analysis of any brand of feeding stuff or cattle feed sold or offered or exposed or kept for sale or distributed in the commonwealth; but all samples for such free analysis shall be taken and submitted in accordance with the rules and regulations which are prescribed by him. The results of any analysis of a commercial feeding stuff made in accordance with the preceding section, except a free analysis as above provided, shall be sent by the commissioner, at least fifteen days before any publication thereof, to the person named on the tag or label of the feeding stuff analyzed.

Amended by St.1971, c. 795, § 8.

§ 233. Taking of samples for analysis; procedure

All samples for analysis of any commercial feeding stuff or cattle feed shall be taken, whenever the circumstances conveniently permit, in the presence of at least one witness, and no action shall be maintained for any violation of sections two hundred and twenty-five to two hundred and thirty-five, inclusive, based upon an analysis of a sample, parts of which are taken from less than five separate original packages, unless there are less than five separate original packages in the lot, in which case parts of the official sample shall be taken from each original package. If the feeding stuff or cattle feed is in bulk, parts of the sample shall be taken from not less than five different places in the lot; provided, that this shall not exclude sampling from bulk when the feeding stuff or cattle feed is not exposed sufficiently to take parts from five different places, in which case parts shall be taken from as many places as practicable. All samples thus taken shall be placed in suitable vessels, marked and sealed. A part of each sample shall be held by the commissioner or his deputy, at the disposal of the person named on the tag or label of the feeding stuff sampled, for fifteen days after the results of the analysis have been reported as provided in the preceding section.

Amended by St.1971, c. 795, § 9.

§ 234. Sale without tag or label or with unregistered or cancelled tag or label

Whoever sells, offers, exposes or keeps for sale or distributes any commercial feeding stuff without the tag or label required, or with a tag or label that has not been registered or the registration of which has been cancelled by the commissioner or by his authorized deputy, or whoever files with the said commissioner or with his authorized deputy for registration a false copy of the tag or label of any feeding stuff or brand of feeding stuff, or whoever impedes, obstructs or hinders the commissioner or any of his deputies in the discharge of the authority or duty conferred or imposed by any provision of sections two hundred and twenty-five to two hundred and thirty-five, inclusive, or whoever sells, offers, exposes or keeps for sale or distributes any feeding stuff which contains a smaller per cent of crude protein or crude fat, or a larger per cent of crude fibre, than is certified in the tag or label of such feeding stuff to be contained therein, or whoever fails properly to state the specific name of each ingredient used in its manufacture, or whoever sells, offers, exposes or keeps for sale or distributes any feeding stuff or cattle feed or brand thereof which has been mixed or adulterated with any substance injurious to the health of live stock or poultry, shall for the first offence be punished by a fine of not more than one hundred dollars and for a subsequent offence shall be punished by a fine of not less than one hundred dollars.

Amended by St.1971, c. 795, § 10.

§ 235. Rules and regulations; enforcement

The commissioner shall enforce sections two hundred and twenty-five to two hundred and thirty-four, inclusive, and may prescribe and enforce such rules and regulations relative to the sale of commercial feeding stuff or cattle feed as he deems necessary to enforce said sections. He may prosecute or cause to be prosecuted any person violating any provision of said sections, and no complaint shall be made or prosecuted for any such violation except with his authorization or approval.

Amended by St.1971, c. 795, § 11.

HAY

§ 236. Weighers of hay

If a town or the city council of a city accepts this section or has accepted corresponding provisions of earlier laws, the mayor or selectmen may from time to time appoint, for a term not exceeding one year, and may at any time remove, weighers of hay, who shall be sworn to the faithful performance of their duty and who shall have the superintendence of the hay scales belonging to such city or town, and shall weigh hay offered for sale therein and any other article offered to be weighed. Cities and towns may establish ordinances and by-laws for the regulation of hay scales and of the compensation of weighers of hay. Whoever, not having been so appointed, sets up hay scales in a city or town for the purpose of weighing hay or other articles offered to be weighed shall forfeit to the use of such city or town twenty dollars a month, so long as such scales are maintained.

TIMOTHY OR HERDSGRASS SEED

§ 237. Sale and delivery of seed; avoirdupois weight

Except as otherwise provided in chapter ninety-nine, all contracts for the sale and delivery of timothy or herdsgrass seed shall be made by avoirdupois weight. Whoever violates this section shall be punished by a fine of not more than twenty dollars.

COAL, COKE, CHARCOAL AND KINDLING WOOD

§ 238. Weighers of coal

The mayor or selectmen shall annually appoint, and may remove, weighers of coal, one of whom at least shall not be engaged in the business of selling coal, who shall be sworn to the faithful performance of their duty, and by whom all coal shall be weighed. No person shall be ineligible for appointment in a town because of the fact that he is not a resident thereof, notwithstanding any provisions to the contrary in any city charter. Women shall be eligible for appointment as weighers of coal.

§ 239. Repealed by St.1931, c. 426, § 12

§ 239A. Standard sizes for anthracite coal; variances or tolerances

The director of standards shall from time to time by rule or regulation establish standard sizes for anthracite coal offered for sale within the commonwealth, with variances or tolerances not to exceed five per cent determined by weight.

Amended by St.1939, c. 261, § 13; St.1968, c. 467, § 16.

§ 240. Sale of coal, coke and charcoal by weight

Coal shall be sold by weight, and, except when sold by cargo, two thousand pounds avoirdupois shall be the standard for the ton. Coke and charcoal in any quantities shall be sold only by weight or measure.

§ 241. Sale of coal, coke and charcoal in bags, sacks or baskets

Coal in quantities of one hundred pounds or less shall be sold by weight, and coke and charcoal in quantities of one hundred pounds or less shall be sold by weight or measure, in bags, sacks or baskets, and until delivered shall be kept in the same bags, sacks or baskets in which they were weighed or measured; and coal, coke and charcoal thus sold shall be exempt from section two hundred and forty-four. When sold by weight, such bags, sacks or baskets shall be plainly marked with the name and business address of the person who puts up the same, and with the weight of the coal, coke or charcoal therein in letters and numerals, respectively, of bold uncondensed type at least one inch in height. Paper bags or sacks used in the sale of coal shall contain and shall be sold as containing twenty-five pounds, avoirdupois weight, and, in addition to the marking hereinbefore required, such bags or sacks shall be plainly and conspicuously marked with the classification of such coal, whether anthracite, semi-anthracite, bituminous containing less than twenty-three per cent volatile matter or bituminous containing more than twenty-three per cent volatile matter, and with the size of the coal contained therein.

§ 242. Sale of coal, coke and charcoal in baskets or receptacles; requisites

Baskets or similar receptacles used in selling coke, charcoal or unpacked kindling wood by measure shall be of one bushel or multiple thereof, Massachusetts standard dry measure, shall have their capacity plainly marked thereon, shall be sealed by a sealer of weights and measures of the town or district where the vendor resides or conducts his business, and shall be filled at least level full when well shaken.

§ 243. Sale of coke and charcoal in paper bags or sacks; specifications; measure; marking

Paper bags or sacks used or intended to be used in the sale of coke, charcoal or kindling wood by measure shall be not less than twenty-five inches in height, not less than thirteen and one half inches in width, and the bottoms shall not be less than four and three quarters inches wide. They shall be filled to a point not more than six inches from the upper end. Bags of unpacked kindling wood or of coke or charcoal sold or offered for sale by measure shall contain, and shall be sold as containing, one half bushel, Massachusetts standard dry measure. Bags and sacks shall be plainly marked with the name and business address of the person putting up the same, and the words "one half bushel" in bold, uncondensed, capital letters at least one inch in height. Whoever himself or by his servant or agent or as the servant or agent of another sells or offers for sale a paper bag or sack to be used in the sale of coke, charcoal or kindling wood by measure which does not conform in every particular to the requirements of this section shall be punished by a fine of not more than one hundred dollars.

§ 244. Certificate of weight; contents; examination

Whoever, except as provided in section two hundred and forty-one, sells coke, charcoal or coal by weight, or whoever sells material for road construction by weight, shall without cost to the purchaser cause the goods or material to be weighed by a sworn weigher of the town where they are weighed, and shall cause to be signed by the weigher a certificate stating the name and place of business of the seller, and either the identifying number, of which a permanent record shall be kept, or the name of the person taking charge of the goods or material after the weighing as given to the weigher on his request, the tare weight, and the quantity of the goods or material. Such certificate shall be given to said person and shall be given by him only to the owner of the goods or material or his agent when he unloads the same; and each such person, on request and without charge therefor, shall permit the director of standards, or any inspector of standards in any town, or any sealer of weights and measures of any town, to examine the certificate and to make a copy thereof.

Amended by St.1941, c. 155, § 1; St.1968, c. 467, § 17.

§ 245. Direction that goods be weighed; powers of director of standards, etc., and sealer

The director of standards or any inspector of standards in any town, or a sealer of weights and measures within his town, wherein any quantity of coke, charcoal or coal or material for road construction in the course of delivery is found may direct the person in charge of the goods or material to convey the same without delay or charge to scales designated by such director, inspector or sealer, who shall there determine the quantity of the goods or material, and, except in the case of coke, charcoal or coal in baskets or bags as required by section two hundred and forty-one, shall determine their weight together with the tare weight, and shall direct said person to return to such scales immediately after unloading the goods or material; and upon such return, the director, inspector or sealer shall determine the tare weight. The scales designated by the director, inspector or sealer as aforesaid may be the public scales of the town or any other scales therein which have been duly tested and sealed and shall be such scales as in his judgment are most convenient.

Amended by St.1933, c. 94, § 2; St.1939, c. 261, § 13A; St.1941, c. 155, § 2; St.1968, c. 467, § 18.

§ 246. Record of weights and measures; keeping

Each sealer of weights and measures of a town and each sworn weigher shall keep in a book used by him solely for that purpose a record of all baskets sealed by him as aforesaid, and of all weighings and determinations of quantities of coke, charcoal or coal or material used for road construction made by him as aforesaid. Such record shall be made at the time of measuring or weighing, and shall state the day and hour of the measuring or weighing, the name and place of business of the vendor, the name of the owner of the baskets or of the purchaser of the goods or material as given to him on his request by the person taking charge of the baskets or of the goods or material after weighing or measuring, the capacity of the baskets measured or quantity of the goods or material determined, and the name of said person; and, in the case of a reweighing as provided in section two hundred and forty-five, shall state the weight as given in the certificate and as determined by him. No charge shall be made by any such sealer for anything done under this section and sections two hundred and forty-four and two hundred and forty-five.

Amended by St.1941, c. 155, § 4.

§ 247. Sale of edgings and kindling wood

Edgings or kindling wood shall not be sold in bundles unless the same are closely packed and are not less than twenty-seven inches in circumference. Kindling wood may be sold in bulk by the load; but if unpacked shall not be sold unless by measure and, if exceeding six inches in length, shall not be sold in bags or sacks.

§ 248. Penalties; enforcement of law

Whoever violates any provision of sections two hundred and forty to two hundred and forty-seven, inclusive, if no other penalty is provided therein, or of a rule or regulation made under section two hundred and thirty-nine A, or fails to comply with any request for information or direction made under authority of sections two hundred and forty, two hundred and forty-one, and two hundred and forty-four to two hundred and forty-six, inclusive, or gives a false answer to any such request, shall be punished by a fine of not more than fifty dollars; and whoever is guilty of fraud or deceit as to the weighing, selling or delivering of coke, charcoal or coal, or the measuring, selling or delivering of fuel oil or range oil, or whoever, by himself, or by his servant, agent or employee, sells or delivers or attempts to sell or deliver coal or coke which is short in weight or coal which contains an unreasonable amount of shale, slate, rock or other foreign substance or which produces an excessive amount of non-combustible residue, including ash, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both. The director of standards and local sealers of weights and measures shall cause sections two hundred and forty-two to two hundred and forty-nine, inclusive, and rules and regulations made under section two hundred and thirty-nine A, to be enforced.

Amended by St.1934, c. 184; St.1939, c. 261, § 14; St.1943, c. 241, § 1; St.1946, c. 222; St.1952, c. 99; St.1968, c. 467, § 19.

§ 249. Possession of illegal measures; penalty

A vendor of coal, coke, charcoal or kindling wood, who has in his possession a basket, bag, sack or other measure which does not conform in every particular to the requirements respecting such measure, with intent to use or permit it to be used in measuring coal, coke, charcoal or kindling wood sold or offered for sale, shall be punished by a fine of not more than twenty dollars, and such basket, bag, sack or measure shall be destroyed.

§ 249A. Inspection of coal; analysis of samples; condemnation

The department of public health, local boards of health, the director of standards and local sealers of weights and measures, by themselves or by their authorized agents, may enter each place where coal is stored or kept for sale and each railroad train or car or any vehicle used for its conveyance and may inspect said coal or take therefrom samples for analysis or inspection. Said department or board shall cause each sample taken to be analyzed, inspected or otherwise satisfactorily tested and shall record and preserve as evidence the results thereof. If, in the opinion of said department or board, upon inspection, analysis or other satisfactory test, said coal is unfit for ordinary use, said department, or said board with the approval of said department, may condemn, seize and cause the same to be destroyed forthwith or disposed of otherwise than for ordinary use. All money received by said department or board for coal disposed of as aforesaid, after deducting the expenses of said seizure and disposal, shall be paid to the owner of such coal.

Amended by St.1939, c. 261, § 15; St.1968, c. 467, § 20.

§ 249B. Interference with officials; penalty

Any person who hinders, obstructs or interferes with the department of public health, local boards of health, the director of standards, local sealers of weights and measures, or their authorized agents, in the performance of their duties under section two hundred and forty-nine A, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both.

Amended by St.1939, c. 261, § 16; St.1968, c. 467, § 21.

§ 249C. Sale of condemned coal

Whoever, by himself, or by his servant, agent or employee, sells, exposes or offers for sale, or has in his custody or possession with intent to sell, coal condemned under the provisions of section two hundred and forty-nine A shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both.

§ 249D. Sale of unfit coal

Whoever, by himself, or by his servant, agent or employee, sells, exposes or offers for sale, or has in his custody or possession with intent to sell, coal unfit for ordinary use shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

§ 249E. Placing foreign substances in coal receptacles; sale

Whoever, by himself, or by his servant, agent or employee, in placing or packing coal in any basket, bag, sack or other receptacle, places or causes to be placed therein any foreign substance, or sells, or exposes or offers for sale, or has in his custody or possession with intent to sell, coal placed or packed in a basket, bag, sack or other receptacle containing an unreasonable amount of any foreign substance or producing an excessive amount of non-combustible residue, including ash, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Amended by St.1943, c. 241, § 2.

§ 249E½. Presumption of excessiveness of non-combustible residue

It shall be presumed in a prosecution under section two hundred and forty-eight or section two hundred and forty-nine E that the non-combustible residue, including ash, is excessive if a test, as determined by the current standard method of tests for sampling and analysis for coal and coke as published by the American Society for Testing Materials and designated as D 271, with the year of publication, produces non-combustible residue, including ash, in excess of the following percentages:

Trade Term.	Maximum Non-Combustible Residue, Including Ash (Dry Basis) (Per Cent).
Broken	12.5
Egg	12.5
Stove	13.5
Chestnut	14.0
Pea	15.5

Added by St.1943, c. 241, § 3.

§ 249F. Enforcement of sections 249A to 249E½

The department of public health, local boards of health, the director of standards and local sealers of weights and measures shall cause sections two hundred and forty-nine A to two hundred and forty-nine B½, inclusive, to be enforced.

Amended by St.1939, c. 261, § 17; St.1943, c. 241, § 4; St.1968, c. 467, § 22.

MATERIAL FOR ROAD CONSTRUCTION

§ 249G. Repealed by St.1941, c. 155, § 3

HEATING OILS

§ 249H. Heating oil standards; rules and regulations; samples; entry and inspection; violations; penalties

The director of standards shall promulgate rules and regulations establishing standards for the various grades of heating oils, requiring manufacturers or distributors to furnish samples of the same, and providing for the entry and inspection of the premises of such manufacturers or distributors, and the inspection of heating oils stored thereon. Whoever violates any rule or regulation promulgated under the provisions of this section shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1971, c. 397.

COMMERCIAL FERTILIZERS

§ 250. Sale regulated; label, form and contents

No commercial fertilizer shall be sold or offered or exposed for sale without a plainly printed label accompanying it, displayed in the manner hereinafter set forth, and truly stating the following particulars:

1. The number of pounds of the fertilizer sold or offered or exposed for sale.

2. The name, brand or trade mark, and, in the case of fertilizer mixtures, the fertilizer grade under which the fertilizer is sold, and, in the case of agricultural lime, its particular form.

3. The name and principal address of the manufacturer, importer or other person putting the fertilizer on the market in the commonwealth.

4. The minimum percentage of each of the following constituents which the fertilizer contains and which, in the case of fertilizer mixtures, shall be expressed in round numbers and in the following order: (*a*) nitrogen, (*b*) available phosphoric acid, (*c*) potash soluble in distilled water; except that when undissolved bone, untreated phosphate rock, tankage, pulverized natural manures, the ground seeds of plants, or wood ashes are sold unmixed with other substances, the minimum percentage of total phosphoric acid therein may be stated in place of the percentage of available phosphoric acid; and except that in the case of agricultural lime the label shall truly state the following: (*a*) minimum and maximum percentage of total calcium oxide, (*b*) minimum and maximum percentage of total magnesium oxide, (*c*) minimum percentage of calcium oxide and magnesium oxide combined as carbonates, (*d*) and, in the case of gypsum or land plaster, the minimum percentage of calcium oxide and of calcium sulphate.

5. If any part of the nitrogen contained in the fertilizer is derived from pulverized leather, hair, wool waste, peat, garbage tankage, or from any inert material whatsoever, unless processed so that its nitrogen shall show a satisfactory activity by the methods of the Association of Official Agricultural Chemists of North America, the label shall truly state the specific materials from which such part of the nitrogen is derived.

Amended by St.1933, c. 67, § 6.

§ 251. Affixing labels to packages; bulk sales

When any fertilizer is sold or offered or exposed for sale in packages, the label shall be affixed in a conspicuous place on the outside thereof. When any fertilizer other than the product of gas houses, known as gas house lime, is offered or exposed for sale in bulk the label shall be affixed in a conspicuous place to the bin or other enclosure where the fertilizer is contained but need not state the number of pounds thereof, and when such fertilizer is sold in bulk the label shall be affixed in a conspicuous place to the vehicle in which the fertilizer is shipped or delivered, and shall state the number of pounds thereof. When any fertilizer is sold in packages furnished by the purchaser the seller shall furnish the labels therefor.

§ 252. Guaranteed analysis, provisions of label as

The provisions of the printed label required under the two preceding sections relating to the constituents contained in any fertilizer shall be known and recognized as the guaranteed analysis of such fertilizer.

Amended by St.1933, c. 67, § 7.

§ 253. Sale of commercial fertilizer with false or untrue label

No person shall sell, offer or expose for sale a commercial fertilizer or brand of commercial fertilizer, any constituent part of which is of a smaller percentage than as stated on the label of said fertilizer, and no person shall sell, offer or expose for sale a fertilizer or brand thereof with a label which is untrue in any particular.

§ 254. Sale of commercial fertilizer; filing copy of label; analysis fee

No person shall sell or offer or expose for sale any commercial fertilizer until he has filed with the commissioner a copy certified by him to be a true copy of the label required by section two hundred and fifty, excepting as to the item as to the number of pounds, for each brand of fertilizer to be sold, offered or exposed for sale and has paid to the said commissioner an analysis fee for each brand aforesaid as follows: eight dollars for nitrogen, eight dollars for phosphoric acid, eight dollars for potash, contained or stated to be contained in any such brand of fertilizer, eight dollars for magnesium oxide when guaranteed in any such brand of fertilizer, and twelve dollars for each brand of agricultural lime and gypsum except gas house lime; nor unless he holds a valid and uncancelled certificate issued under section two hundred and fifty-six. Any person desiring in any year to sell or to offer or expose for sale any brand of commercial fertilizer in respect of which the requirements of this section as to the filing of a copy of the label thereof and the payment of the analysis fee therefor have not been complied with before January first of said year, may offer or expose for sale and sell the said brand upon filing a certified copy of the label thereof and paying the full analysis fee therefor. No person shall be obliged to file a copy of the label of, or to pay an analysis fee for, any brand of fertilizer for which a certified copy of the label has been filed and the analysis fee paid by the manufacturer or importer of such brand.

No person shall file with the director a false copy of the label of any fertilizer or brand of fertilizer.

Amended by St.1933, c. 67, § 8; St.1971, c. 795, § 12.

§ 255. Sworn statement; permit; fee; cancellation of certificate

In addition to the requirements of the preceding section, each person who sells or offers or exposes for sale any commercial fertilizer shall, on or before January first and July first in each year, file with the commissioner a sworn statement in such form as he prescribes setting forth the number of net tons of fertilizer sold by him in the commonwealth during the preceding six months, stating in each case the number of tons of each brand sold, together with a permit allowing the commissioner or his authorized deputy to examine the books of the person filing the statement, for the purpose of verifying the same, and shall thereupon pay to the commissioner a fee of six cents a ton of two thousand pounds for the fertilizers so sold; except that no such statement, permit or fee shall be required in respect of agricultural lime and gypsum. The commissioner or his authorized deputy may cancel the certificate for any brand of fertilizer in respect to which the requirements of this section have not been complied with. Whoever sells, offers or exposes for sale a fertilizer or brand of fertilizer without having filed the statement and permit and paid the fee required by this section shall be punished by a fine of not more than five hundred dollars. But no person shall be obliged to file a statement or permit, or to pay the fee required by this section, for any brand of fertilizer for which the statement and permit have been filed and for which the fee has been paid by the manufacturer or importer of such brand.

Amended by St.1933, c. 67, § 9; St.1971, c. 795, § 13.

§ 256. Certificate of filing of label; issuance; cancellation, etc.

When the certified copy of the label of any brand of fertilizer has been filed, and the proper fees have been paid, the commissioner shall issue a certificate to that effect; and the certificate shall authorize the sale, in compliance with sections two hundred and fifty to two hundred and sixty-one, inclusive, of the brand of fertilizer for which the certificate is issued, up to and including December thirty-first of the year for which it is issued. The said commissioner or his authorized deputy may refuse to issue a certificate for any fertilizer or brand of fertilizer which does not contain at least one half of one per cent of nitrogen, or one half of one per cent of potash soluble in distilled water, or one per cent of phosphoric acid, or five per cent of calcium oxide, or five per cent of magnesium oxide, or which contains its potash, phosphoric acid, calcium or magnesium oxides in forms substantially insoluble by the methods of analysis for commercial fertilizers and agricultural lime products prescribed by the Association of Official Agricultural Chemists of North America, or which does not possess substantial properties as a fertilizer. The commissioner or his authorized deputy may also refuse to issue a certificate for any fertilizer under a name, brand or trade mark which is untrue in any particular, or which, in his opinion, would be misleading or deceptive in any particular, or would tend to mislead or deceive as to the constituents or properties of said fertilizer, and may refuse to issue more than one certificate for any fertilizer under the same name or brand, or to issue a certificate for any fertilizer under a name or brand to the use of which the person seeking it is not lawfully entitled. If a certificate is issued for any fertilizer and it is afterward discovered that the certificate itself, or the granting of it, or the manner of procuring it, was in any respect in violation of any provision of sections two hundred and fifty to two hundred and sixty-one, inclusive, the commissioner or his authorized deputy may cancel the certificate. Whoever sells, offers or exposes for sale any fertilizer or brand of fertilizer for which no certificate has been issued by the commissioner or his authorized deputy, or the certificate for which has been cancelled, shall be punished by a fine of not more than two hundred dollars.

Amended by St.1933, c. 67, § 10; St.1971, c. 795, § 14.

§ 256A. Methods for collection and delivery of samples for analysis pursuant to section 256

Samples for analysis as stipulated in section two hundred and fifty-six shall be collected by the commissioner or his duly authorized deputy and shall be delivered to the Massachusetts agricultural experiment station of the university of Massachusetts for analyses according to methods approved by the Association of Official Agricultural Chemists of North America.

Added by St.1971, c. 795, § 15.

§ 257. Annual analysis; samples; fees; publication of reports; free analysis

Each commercial fertilizer and brand of commercial fertilizer sold or offered or exposed for sale shall be subject to analysis by the commissioner or by his duly designated deputy. The said commissioner shall make or cause to be made in each year one or more analyses of each fertilizer and brand of fertilizer sold or offered or exposed for sale in the commonwealth, and shall collect the annual analysis fee provided for by section two hundred and fifty-four; and he, his inspectors and deputies, may enter upon any premises where any commercial fertilizer is sold or offered or exposed for sale to ascertain if sections two hundred and fifty to two hundred and sixty-one, inclusive, are complied with, and to take samples for analysis. The analysis of all fertilizers shall be made by the methods adopted by the Association of Official Agricultural Chemists of North America. The said commissioner may publish or cause to be published in reports, bulletins, special circulars or otherwise, the results obtained by said analyses. Said publications shall also contain such additional information in relation to the character, composition, value and use of the fertilizers analyzed as the commissioner sees fit to include. He may make or cause to be made for any person a free analysis of any commercial fertilizer or brand of commercial fertilizer sold or offered or exposed for sale in the commonwealth, but he shall not be obliged to make such free analysis, or to cause the same to be made, unless the samples therefor are taken and submitted in accordance with the rules and regulations which he prescribes. The results of any analysis made in accordance with the aforesaid sections, except a free analysis as aforesaid, shall be sent by the commissioner to the person named in the printed label of the fertilizer analyzed at least fifteen days before any publication of such results.

Amended by St.1933, c. 67, § 11; St.1971, c. 795, § 16.

§ 258. Taking of samples for analysis

Each sample of commercial fertilizer taken for analysis shall be of not less than substantially two pounds in weight, and each sample shall be taken, whenever the circumstances conveniently permit, in the presence of the person selling or offering or exposing for sale the fertilizer sampled, or of a representative of such person. Broken packages shall not be sampled, and all samples shall be taken by means of a sampling tube so designed as to remove a core extending from the top to the bottom of the package, from substantially ten per cent of the fertilizer to be sampled, except that if fertilizer is sold or offered or exposed for sale in bulk ten single samples shall be taken from as many different portions of the lot. An unbroken package of fertilizer, not exceeding twenty-five pounds, may, upon tendering the market price, be taken for the purpose of analysis and the contents thereof shall constitute a suitable and legal sample for said purpose. All samples taken shall be thoroughly mixed and divided into two nearly equal samples, placed in suitable vessels, and marked and sealed. Both shall be retained by the commissioner, but one shall be held intact by him for one year at the disposal of the person named in the label of the fertilizer sampled.

Amended by St.1933, c. 67, § 12; St.1971, c. 795, § 17.

§ 259. Disposition of fees

All fees for analysis, or otherwise, under any provision of sections two hundred and fifty to two hundred and sixty-one, inclusive, shall be collected by the commissioner and paid to the commonwealth.

Amended by St.1971, c. 795, § 18.

§ 260. Rules and regulations; complaints

The commissioner shall enforce sections two hundred and fifty to two hundred and sixty-one, inclusive, and may prescribe and enforce such rules and regulations as to the sale of commercial fertilizers as he deems necessary to enforce said sections, and may prosecute or cause to be prosecuted any person violating any provision of said sections. No complaint based upon an analysis of samples shall be made for any violation of any provision of said sections, if samples are taken otherwise than as provided therein. No complaint shall be made for the failure of any fertilizer or brand of fertilizer to meet the guaranteed analysis thereof if the analysis made by the commissioner of such fertilizer or brand shows the amounts of its constituents to be substantially equivalent to the percentages stated in the label.

Amended by St.1971, c. 795, § 19.

§ 261. Hindering or obstructing commissioner, inspector or deputy; penalty

Whoever hinders or obstructs the commissioner, his inspector or deputy, in the discharge of any authority or duty conferred or imposed by any provision of sections two hundred and fifty to two hundred and sixty-one, inclusive, and, except as otherwise provided in section two hundred and fifty-six, whoever violates any provision of sections two hundred and fifty to two hundred and fifty-four, inclusive, shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Amended by St.1971, c. 795, § 20.

AGRICULTURAL AND OTHER SEEDS

§§ 261A to 261L. Repealed by St.1975, c. 203, § 1

LIME AND LIME CASKS

§ 262. Inspectors of lime

The mayor of a city or the selectmen of a town where lime is manufactured, or into which it is imported, may annually appoint one or more inspectors of lime, who shall be sworn to the faithful performance of their duty and shall inspect all lime manufactured in such city or town at the time when a cask is filled at the kiln, and all lime imported or sold in such city or town.

§ 263. Branding casks of lime

Each cask of lime so inspected shall be branded with the word "inspected", with the name of the inspector and with the name of the town where it is manufactured.

§ 264. Fees of inspectors

An inspector of lime shall receive four cents for the inspection and branding of each cask of such manufactured lime, which shall be paid by the manufacturer or owner; and the same amount for the inspection of each cask of lime so imported or sold, which shall be paid by the purchaser.

§ 265. Quality of lime and casks

No stone lime manufactured within the commonwealth shall be sold or exposed for sale, or shipped on board a vessel in casks, unless it is well burnt and pure, in good and sufficient new casks containing either one hundred and eighty or two hundred and eighty pounds each, made of well seasoned heads and staves, with ten good and sufficient hoops on each cask, well driven and sufficiently secured with nails or pins.

§ 266. Sale of lime in unauthorized casks; penalty

Whoever sells, exposes for sale, ships or receives on board a vessel in casks, any lime manufactured in the commonwealth, other than such as is contained in casks made according to the preceding section and marked or branded as provided in section two hundred and sixty-three, shall be punished by a fine of one dollar and fifty cents for each cask sold, exposed for sale, shipped or received on board a vessel; but sections two hundred and sixty-two to two hundred and sixty-eight, inclusive, shall not prevent any person from retailing lime by the bushel or other quantity, when not in casks.

§ 267. Shifting contents of branded casks

Whoever, after a cask containing lime has been branded as aforesaid, shifts the contents of such cask and puts therein other lime with intent to sell the same, shall be punished by a fine of one dollar and fifty cents for each cask of lime so shifted.

§ 268. Forfeiture of casks

A cask of lime which is sold, exposed for sale, or put on board a vessel, contrary to any provision of sections two hundred and sixty-two to two hundred and sixty-eight, inclusive, shall be forfeited, and may be seized and libelled by an inspector of lime.

MARBLE, SOAPSTONE AND FREESTONE

§ 269. Repealed by St.1931, c. 426, § 13

UPHOLSTERED FURNITURE, BEDDING AND STUFFED TOYS

§ 270. Definitions

The following words and phrases as used in this section and in sections two hundred and seventy-one to two hundred and seventy-seven, inclusive, which sections may be cited and referred to as the furniture and bedding inspection law, shall have the following meanings unless the context otherwise requires:

"Annually", or any of its variants, the period beginning July first of one year and ending June thirtieth of the succeeding year, or any unexpired portion of such period.

"Bedding", includes any quilted pad, mattress pad, hammock pad, mattress, comforter, bunk quilt, sleeping bag, box spring, studio couch, pillow, cushion, or any bag or container made of leather, cloth or any other material, or any other device that is stuffed or filled in whole or in part with concealed material in addition to the structural units and filling material used therein and its container, all of which is designed or constructed for use by any human being for sleeping, resting or reclining purposes.

"Department", the department of public health.

"Division", the division of food and drugs in the department of public health.

"Filling material", cotton, wool, kapok, feathers, down, hair, sisal, jute, glass fiber, rubber, silk, rayon, or any other material or any combination thereof, loose, carded, felted or in batting form, pads or in any other prefabricated form, concealed or not concealed, to be used or which can be used in articles of bedding, upholstered furniture or in stuffed toys.

"Garnetted clippings", filling material intended for use in an article of upholstered furniture or bedding and composed entirely of defabricated new clippings which have never been used. Such garnetted clippings may be labeled with the word "new".

"Inspector", a representative of the division of food and drugs.

"Manufacturer", a person who, either by himself or through employees or agents, makes any article of upholstered furniture or bedding in whole or in part, or who does the upholstering or covering of any structural unit thereof, using either new or secondhand material.

"New", when used with respect to an article or material, any article or material which has not been previously used.

"Oily", when used with respect to filling material, any filling material which contains more than five per cent of oil. Such filling material shall be designated on the label as "oily".

"Owner's material", any article or material belonging to a person for his own, or tenant's use, which is sent to a manufacturer, repairer or renovator to be repaired or renovated, or used in repairing or renovating.

"Person", includes individuals, partnerships, associations, firms, auctioneers, trusts and corporations, and their agents, servants and employees.

"Pillow", a bag or case of cloth or other soft material filled or stuffed with feathers, down, kapok, cotton, hair, wool, glass fiber, rubber, silk, rayon or other sanitary filling not prohibited by sections two hundred and seventy-one to two hundred and seventy-six, inclusive, to be used as a rest or support in reclining or sleeping.

"Remade" or "renovated", when used with respect to an article of bedding or upholstered furniture, an article of bedding or upholstered furniture which has been remade or renovated and which is not to be resold or offered for resale but is to be returned to the original owner.

"Renovator", "reupholsterer", "remaker" or "repairer", a person who, either by himself or through employees or agents, is engaged primarily in the remaking or renovating of upholstered furniture, and shall also mean a person who, incidental to the business of remaking or renovating upholstered furniture, renovates or manufactures articles of bedding or furniture to be sold by him at retail. Such person shall not be bound by any provision of this law excepting section two hundred and seventy-three; provided, however, that if he manufactures upholstered furniture or bedding to be sold by him at retail, or renovates articles of bedding he shall also comply with the labeling provision of section two hundred and seventy-two, for such furniture or bedding.

"Residence dealer", a person who sells a new or used article of upholstered furniture or bedding from his own or any other person's place of abode or from a salesroom which does not have an apparent and usual store entrance.

"Retailer", a person who sells, offers or exposes for sale, or has in his possession with intent to sell, to a consumer or user an article of bedding, upholstered furniture or stuffed toys.

"Secondhand", "used" or "used material", any material which has been previously used for any purpose. Manufacturing processes shall not be considered as prior use. An article of upholstered furniture returned by the purchaser for exchange, alteration or correction within thirty days from date of delivery after original sale at retail shall be deemed to be a new article; but after thirty days from date of such delivery, such article shall be deemed to be secondhand. Any article of upholstered furniture or bedding or any stuffed toy shall be deemed secondhand if it contains any secondhand material, in whole or in part.

"Sell", sell, offer or expose for sale, barter, trade, deliver, give away, rent, consign, lease, possess with an intent to sell or dispose of in any other commercial manner.

"Sterilizer", a person licensed by the department to sterilize any upholstered furniture, bedding or stuffed toys and filling material or component parts thereof.

"Stuffed toy", any article intended for use by infants or children as a toy and which is filled with or contains any cotton, wool or kapok fibers, garnetted clippings, hair, feathers or down or any other material or chemicals. All materials used in stuffed toys shall be new and free from dangerous or harmful chemicals or other substances. Manufacturers using material in stuffed toys containing products of animal origin shall have said material sterilized in accordance with section two hundred and seventy-three.

"Supply dealer", a person licensed by the department to manufacture, process or sell at wholesale any felt, batting, pads or other filling, loose, in bags, in bales, or in containers, concealed or not concealed, to be used or which can be used in articles of bedding or upholstered furniture, or in stuffed toys.

"Upholstered furniture", any furniture, including children's furniture, movable or stationary which (a) is made or sold with cushions or pillows, loose or attached; or (b) is itself stuffed or filled, in whole or in part, with any material, hidden or concealed by fabric or any other covering, including cushions or pillows belonging to or forming part thereof, together with the structural units, the filling material and its covering and its container, which can be used as a support for the body of a human being, or his limbs and feet when sitting or resting in an upright or reclining position.

"Upholstery jobber", a person whose primary business is the wholesaling of fabrics used in the reupholstery trade. Such a person may also sell the basic supplies used in the trade, including new filling materials purchased from a licensed supply dealer. An upholstery jobber shall be excluded from the licensing provisions of this law.

Added by St.1959, c. 611, § 2. Amended by St.1961, c. 348, § 1; St.1965, c. 514, §§ 2 to 7.

§ 271. Licensing; manufacturers and retailers; powers of director

Except as otherwise provided, any person who advertises, solicits or contracts to manufacture upholstered furniture, bedding or stuffed toys and who either does the work himself or has others do it for him, shall obtain the license required by this section for the particular type of work which he solicits or advertises he will do, regardless of whether he has a shop or factory.

Every person manufacturing upholstered furniture, bedding or stuffed toys shall annually obtain a manufacturer's license from the department bearing a serial number assigned by the department, except as otherwise provided.

A wholesaler of upholstered furniture, bedding or stuffed toys shall annually obtain a wholesale dealer's license from the department, unless he holds a manufacturer's license.

Every person manufacturing, processing or selling at wholesale any felt or batting or any pads or loose material in bags, bales or containers intended for use as filling material in bedding, upholstered furniture or stuffed toys shall annually obtain a supply dealer's license from the department bearing a serial number assigned by it, unless he holds a manufacturer's license.

Any person who sells directly or indirectly to any person, either at wholesale or retail, any merchandise subject to this law by means of a catalog, or in any other manner, shall comply with this law.

Every person doing business at the same address under more than one firm name shall be subject to the licensing provisions of this section for each firm name.

Such manufacturers, wholesale dealers and supply dealers located outside the commonwealth, who ship their products into the commonwealth, shall first obtain a license from the department.

The department shall prescribe the procedure relative to:—

(*a*) Assignment or reassignment of serial numbers.

(*b*) Transfer of licenses between persons, where such transfer is effected through rent, lease or sale of the business.

(*c*) Change in name, ownership, address or of license classification.

The director of the division, after a hearing, and with the advice and consent of a majority of the advisory board, may (1) revoke or suspend for violation of any provision of this law, the license of any person located outside the commonwealth who ships his products into the commonwealth and (2) suspend or refuse to renew, for a period of not more than six months, for any two violations of any provision of this law within a period of twelve months committed not less than thirty days apart, the license of any other person.

No person required to have a license under the provisions of this section, shall manufacture, sell, offer or expose for sale, have in his possession with intent to sell, repair, remake, or renovate any article of bedding or filling material without first obtaining such a license. No dealer or distributor shall sell, or purchase for purposes of sale, an article of bedding or an article of upholstered furniture or a stuffed toy from a manufacturer or wholesaler dealer who is not duly licensed or whose license has been revoked.

This section shall not apply to upholstered furniture, articles of bedding or stuffed toys sold by an officer or other person by order of the court.

Added by St.1959, c. 611, § 2. Amended by St.1965, c. 514, §§ 8 to 12; St.1966, c. 521.

§ 272. Labeling; manner; power of department; reciprocity; removal of labels

No person shall manufacture or sell at wholesale or retail or otherwise, directly or indirectly, make, repair, renovate or offer or expose for sale, or have in his possession with intent to sell, any stuffed toy or article of new or secondhand upholstered furniture or bedding which can be used by human beings, if it is made of any new or secondhand material which is hidden or concealed by fabric or any other covering, unless such article is plainly labeled as provided in this law, and prescribed by the department.

No person shall, at wholesale or retail or otherwise, directly or indirectly, sell or have in his possession with intent to sell any filling material or other component parts to be used or which can be used in upholstered furniture, bedding or stuffed toys, unless such material is plainly labeled with a tag or other marking as provided in this law and prescribed by the department.

No person shall, directly or indirectly, sell in this commonwealth, at wholesale or retail, any article of upholstered furniture or bedding or any stuffed toy, or any filling material or other component part to be used or which can be used in upholstered furniture, bedding or stuffed toys manufactured out of the commonwealth, unless it is labeled in accordance with the provisions of this law and fully complies with all the requirements of this law.

All labels required by this law shall be securely attached to the article during the process of manufacture at the factory. Such labels shall be fixed in such position that they may be conveniently examined and shall be in accordance with the rules and regulations pertaining to labeling promulgated under authority of this law.

For the purposes of this section, possession of any article of bedding or of upholstered furniture or of any filling material not labeled as provided herein, by any person engaged in the business of manufacturing, selling or offering for sale any such article shall be prima facie evidence that such article is being manufactured, repaired, renovated or is offered or exposed for sale in violation of the provisions of this section.

The label shall show or state:—

(*a*) Whether the concealed materials are new or secondhand. If the materials are wholly new, the heading shall read "All New Material". If the materials are in whole or in part secondhand, the heading shall read "Secondhand Material".

(*b*) An accurate description of the kind of material used for filling including an accurate statement as to the percentage of the components of said filling material in accordance with the regulations of the department. In the case of feathers and mixtures thereof or articles containing such mixtures, the label shall specify the kind of fowl from which the feathers were obtained and the physical condition of such feathers. If an article contains down, the term down may be used without further description if the contents consist wholly of said material. If, however, the article is labeled goose or duck down it shall consist wholly of down derived from said fowl. If the article is labeled as containing a mixture of goose and duck down, the label shall specify the percentage of each. In the case of mattresses, upholstered furniture or stuffed toys containing hair, the label shall specify the animal source of such hair. In all regulations requiring percentages to be specified upon the label, the department may include generally accepted tolerances.

(*c*) If sterilized, the statement "Contents Sterilized".

(*d*) The serial number of the manufacturer, assigned by the department.

Every person who repairs or renovates bedding, for any owner or customer or for his own or tenant's use, upon receiving each article for such repair or renovation, shall immediately securely affix a tag of identification showing the owner's or dealer's name, address and date upon which it was received, and when completed, shall attach the "Owner's Material" label prescribed by the department.

The department is hereby authorized to prescribe the wording, form style, size, material, lettering, tolerances, requirements or any changes on labels in order to carry out the provisions of this law.

The department may issue regulations permitting reciprocity of registration or permit numbers with such states having such a requirement.

It shall be a violation of this law to use in the description on any label any false or misleading term or designation, or term or designation likely to mislead.

Every person, except the purchaser for his own use, or an inspector in the performance of his duties under this law, who attempts to remove, or does remove, deface, alter, or causes to be removed, the label or any mark or statement placed upon any upholstered furniture or bedding under the provisions of this law shall be guilty of a violation of this law.

No person shall manufacture for purposes of sale, sell, offer or expose for sale, or have in his possession with intent to sell, any article of bedding, consisting in part of metal which has previously been used, or any upholstered spring bed, box spring, studio couch, davenport, day bed, bed spring, metal bed, metal folding bed, metal couch, metal cradle, metal bassinet or similar articles designed for the use of persons when sleeping or reclining, consisting in whole or in part of metal which has previously been used, unless such article is plainly and permanently marked or tagged "Secondhand metal used in this article" and unless, if any such article is enclosed in a bale, box, crate or other receptacle, there shall be plainly marked upon such receptacle, or upon a tag securely attached thereto, a statement that the contents of such receptacle are marked as herein required. In the case of springs which have not previously been used, said springs shall be labeled as "New Material".

Added by St.1959, c. 611, § 2. Amended by St.1965, c. 368; St.1965, c. 514, §§ 13 to 16.

§ 273. Licensing; establishments for sterilization; examination of establishments; sterilizations

No person shall engage in the business of sterilizing articles or filling materials referred to in sections two hundred and seventy to two hundred and seventy-six, inclusive, without first obtaining a license from the department.

No sterilizer located outside the commonwealth shall ship his product into the commonwealth without first obtaining a license from the department.

No manufacturer, dealer or distributor shall receive or purchase any secondhand filling material, feathers, down or hair for use in the manufacture, renovation or repair of an article of bedding or upholstered furniture from a sterilizer who is not licensed as provided in this section.

Every such person shall apply for a license and set forth the place where the sterilizer's apparatus will be located, the type and kind of equipment to be used, the names and addresses of the true owners of the sterilizing establishment and such other data as the department may from time to time require.

The department shall cause an investigation to be made and if it is satisfied that the apparatus will comply with the regulations of the department made pursuant to sections two hundred and seventy to two hundred and seventy-six, inclusive, the license shall be issued.

Inspection shall be made from time to time to determine whether the sterilizer is fully and faithfully complying with all of the provisions of this law and with the regulations promulgated by the department with respect to sterilization.

No person shall use any material to make any article of bedding or upholstered furniture for sale that is made from material

(*a*) that comes from an animal or fowl,

(*b*) that contains any bugs, vermin, insects or filth,

(*c*) that is unsanitary,

(*d*) that contains burlap or other material which has been used for balings, or

(*e*) any secondhand filling material,

unless such material has been thoroughly sterilized by a process approved by the department.

Every article of upholstered furniture or bedding from any private or public hospital, jail or other institution or which has been used by any person suffering from an infectious or contagious disease, shall be sterilized before it is repaired or renovated.

New or sterilized articles of upholstered furniture or bedding or materials shall at all times be kept separate from any secondhand articles or materials that are unsterilized.

Secondhand upholstered furniture or bedding, or secondhand filling materials or other component parts to be used or which can be used in upholstered furniture or bedding, received from outside of this commonwealth shall comply with all the sterilization provisions of sections two hundred and seventy to two hundred and seventy-six, inclusive, before it is accepted, sold or delivered, either directly or indirectly by any person.

All secondhand mattresses, if intended for resale, shall be sterilized as required by sections two hundred and seventy to two hundred and seventy-six, inclusive.

A person engaged in the business of renting articles of bedding shall cause such articles of bedding to be sterilized before being returned to use.

Added by St.1959, c. 611, § 2. Amended by St.1961, c. 348, § 2.

§ 274. Rules and regulations; advisory board

The department is authorized to establish and promulgate all rules and regulations, including those pertaining to labeling and sterilization, necessary to carry out the provisions of sections two hundred and seventy to two hundred and seventy-six, inclusive. The department is further authorized to establish further definitions for filling material.

There shall be within the department an advisory board consisting of seven members to be appointed by the governor, with the advice and consent of the council, and upon the recommendation of the department. Two of said members shall be designated in their original appointments to serve for one year, two for two years and three for three years. Upon the expiration of the term of a member, his successor shall be appointed in the manner aforesaid for three years. Such persons shall be recommended by the department on the basis of their qualifications, as determined by their business and civic interests and affiliations, to represent both the industry and the consumer.

Members of the advisory board shall serve without compensation, and shall meet quarterly and at other times at the discretion of the chairman. They shall receive their necessary travel and other expenses when engaged in the work of the board.

The director of the division directly responsible for the enforcement of this law shall appoint a chairman of the advisory board and shall designate an employee of the division to be secretary.

The board shall:—

(*a*) Act entirely in an advisory capacity, except as provided in section two hundred and seventy-one. A majority of the members of the board present and voting shall constitute the basis for an official action or recommendation of said board.

(*b*) Consider all matters submitted to it by the director.

(*c*) On its own initiative recommend to the department such rules and regulations and any changes thereon which the advisory board may deem important and necessary.

(*d*) Co-operate in the preparation of rules and regulations supplemental to the provisions of this law.

Added by St.1959, c. 611, § 2.

§ 275. Licenses; applications; fees

The application for each license, except a license relative to stuffed toys, and annual license renewal shall be accompanied by a fee of fifty dollars payable to the commonwealth, which fee shall be returned to the applicant if the license is not granted. The application for a license relative to stuffed toys shall be accompanied by a fee of one hundred dollars and the annual license renewal fee shall be twenty-five dollars.

Added by St.1959, c. 611, § 2. Amended by St.1965, c. 514, § 17.

§ 276. Inspector; powers and duties

The inspector shall have access to any premises in which is kept or stored any article of bedding, upholstered furniture, stuffed toy, or filling material regulated by this law. He may inspect on the premises any materials intended for the manufacture of upholstered furniture or bedding, partly finished and finished articles of upholstered furniture and bedding, and may open such articles, including pillows or cushions belonging to or forming part thereof, for the purpose of inspecting concealed filling material and may take either the entire article or filling material in such quantities as he may deem necessary for analysis. This section shall not apply to antique furniture.

The inspector may seize, order destroyed or order off-sale any article of bedding, upholstered furniture or stuffed toy, or filling material which has been contaminated in any way, including but not limited to fire, water, flood, obnoxious odors or radiation which cannot in the opinion of the division be properly processed so as to be safe and sanitary if used. Said material shall be destroyed or salvaged in accordance with the directions set forth by the division, so that said contamination may be rendered safe and sanitary.

The inspector may order off-sale, and may so tag, any article of bedding, upholstered furniture or stuffed toy, or material therefor which is not tagged as required by section two hundred and seventy-two or which is tagged with a tag bearing a misleading term, description, designation or statement. The inspector may tag as being unfit any article or material damaged or found unfit from any cause

No articles or materials placed off-sale or declared to be unfit by the inspector shall be sold nor shall the contents thereof be altered, interfered with, or removed in whole or in part, nor shall the articles or contents thereof be removed or permitted to be removed from the premises when placed off-sale until such articles or materials are released by the inspector. The inspector shall release such articles or materials upon the completion of corrective measures taken to effect compliance with this law. All articles placed off-sale or removed shall be subject to examination by the inspector and shall be so placed or stored so as to be readily accessible at all times and shall be produced for examination upon demand by any such inspector made upon the person or persons in charge of the establishment or premises where such articles or materials are placed off-sale.

Samples of filling material shall be taken by opening the seam of the article at a point where it may be resewed with a minimum of difficulty and where it will not affect the quality of the article, if possible.

The off-sale tag to be affixed by an inspector in accordance with the provisions of this section to any article of suspected upholstered furniture, bedding or stuffed toy or any filling material shall be a red tag and shall contain such information as may be required by the department. It shall be removed upon proof that the provisions of sections two hundred and seventy to two hundred and seventy-six, inclusive, have been complied with.

Any person who removes, or causes to be removed, any tag or device placed by an inspector upon any article of upholstered furniture, bedding or stuffed toy or any material shall be guilty of a violation of this law.

No person shall interfere with, obstruct or otherwise hinder, any inspector of the department in the performance of his duties.

Any police officer, member of any local board of health, or other town official, who has reason to believe that any provision of sections two hundred and seventy to two hundred and seventy-six, inclusive, has been or is being violated, shall give notice to the department.

The director or any inspector may cite any person engaged in manufacturing, repairing, renovating, sterilizing or selling any upholstered furniture, bedding or stuffed toy materials intended to be used, or which can be used, in its manufacture, repair or renovation, to a hearing to show cause why he should not be subject to disciplinary action or prosecution for any act or omission in violation of sections two hundred and seventy to two hundred and seventy-six, inclusive.

Added by St.1959, c. 611, § 2. Amended by St.1965, c. 514, § 18.

§ 277. Penalties

Whoever violates any provision of sections two hundred and seventy to two hundred and seventy-six, inclusive, shall be punished by a fine of not less than twenty-five dollars nor more than five hundred dollars or by imprisonment for not more than six months, or both. Any person convicted of a violation of any rule or regulation made under authority of section two hundred and seventy-four shall be punished by a fine of not more than one hundred dollars, as provided in the rule or regulation.

Added by St.1959, c. 611, § 2.

FURS, ETC.

§ 277A. Marking or labelling of furs; misrepresentations

All natural, dyed or imitation furs, and all articles made wholly or partly therefrom, sold at retail within the commonwealth, shall be plainly marked or labelled with an accurate statement of the material which they contain, together with the name and address of the seller. If such statement refers to the fur or other material by a trade name, it shall further designate it by the true name or names of the animal or animals from which such fur is taken or of such other material. In the case of fur, such statement shall fully disclose that the fur sold or contained in the article sold is dyed, or that the fur or article is made of pieces of fur other than whole skins, if such is the fact. Such statement shall contain no misrepresentation as to the place from which the fur or other material came, as to the manufacturer of the article, or as to any other matter, and shall be plainly and permanently marked or branded on the inside of the skin, or plainly set forth in a permanent label firmly sewed to the material or article or to the permanent lining of the article. Whoever violates any provision of this section shall be punished by a fine of not more than two hundred dollars.

Added by St.1941, c. 422.

IMPORTED GOODS

§ 277B. Foreign goods or services; marking; advertisement; penalty

No person shall sell, or offer or expose for sale any machinery, hardware, ladders, shoes or other footwear, fabrics, suits or other wearing apparel, sporting goods or equipment, radios or parts thereof, or scallops, which have been imported from a foreign country, without notifying each person purchasing or intending to purchase the same that it has been imported, by displaying in a conspicuous place, in letters at least as large as the figures indicating the price of the goods to be sold, a sign marked "Imported Goods". If the goods have an individual price marking, then in like manner, they shall also be marked with the words "Imported Goods" or the country of origin indicated.

No person shall advertise for sale such goods unless such advertisement also contains the words "Imported Goods". The word "person" as used in this paragraph shall not be deemed to include a person owning or publishing a newspaper, owning or operating a radio or television station, or other person, furnishing an advertising medium for the sale of such goods.

No person shall sell, or advertise, offer or expose for sale any passenger tickets for ocean cruises unless such tickets, or such advertisement, contain a statement indicating the flag of registry of the vessel.

Whoever violates any provision of this section shall, for the first offense, be punished by a fine of not less than fifty dollars nor more than one hundred dollars, and, for each subsequent offense, by a fine of not less than fifty dollars nor more than five hundred dollars or by imprisonment for one month, or by both such fine and imprisonment.

Added by St.1961, c. 172. Amended by St.1962, c. 92; St.1962, c. 206; St.1963, c. 94; St.1964, c. 253.

NAILS

§ 278. Nails and brads; manufacture; packing

Wrought, cut or wire nails and brads of all sizes manufactured in the commonwealth shall be well made, packed free from waste pieces of iron unless they are refuse nails or brads, and free from any fraudulent mixture increasing the weight, in strong and sufficient casks of season timber, well hooped, containing not more than three hundred pounds each.

§ 279. Marking or branding of casks

Each cask of wrought, cut or wire nails or brads shall be marked or branded on the head by the manufacturer, in plain, legible letters in the English language, with his name and the net weight of the contents of the cask.

§ 280. Sale of unbranded or unmarked casks of nails or brads

If a cask, package or quantity of wrought, cut or wire nails or brads, manufactured in the commonwealth or elsewhere and not branded or marked as provided in the preceding section, is offered or exposed for sale within the commonwealth or put on board a vessel or vehicle, unless to be carried out of the commonwealth, it shall be forfeited.

§ 281. Counterfeiting brand, etc.; penalty

Whoever counterfeits a brand used or intended to be used for the purpose of marking a cask of nails or brads, or destroys or alters a mark or impression made by another's brand on a cask of wrought, cut or wire nails or brads, and causes a different impression by such counterfeit brand to be marked or impressed thereon, or shifts any such nails or brads from one branded cask to another and thereby avails himself of another's brand, shall forfeit twenty dollars.

§ 282. Disposition of forfeitures

All forfeitures recovered under the two preceding sections shall be divided equally between the informer and the commonwealth.

SLOT MACHINES, ETC.

§ 283. Slot machines and other automatic devices; use regulated

No person shall maintain any slot machines or other automatic device, except gas meters, electric meters and telephones, which, upon the deposit therein of any coin or other article of value, furnishes music, or other entertainment, exhibits pictures, provides facilities for weighing, supplies any merchandise or other thing, or renders any service, or is represented to do or perform any of the above mentioned things, unless such machine or device is of a type approved by the director of standards; but no person maintaining such machine or device with respect to which, or to the operation, service or supply of which, there is any element of chance shall be protected or be entitled to immunity from prosecution because of such approval.

Amended by St.1939, c. 261, § 17B; St.1968, c. 467, § 23.

§ 284. Penalty

Whoever installs or maintains a machine or device mentioned in the preceding section which is of a type not approved as therein provided shall, if such machine or device fails properly to respond to the insertion or deposit therein of a coin or other article of value, be punished by a fine of not more than twenty-five dollars.

THREAD

§ 285. Sewing thread; sale; marking

It shall be unlawful to keep for the purpose of sale, offer or expose for sale, or sell any sewing, basting, mending, darning, crochet, tatting, hand-knitting or embroidery thread, put up or packaged in advance of sale in or on any form of unit, for either wholesale or retail sale, unless such unit be definitely, plainly, and conspicuously marked to show its net measure in terms of yards or its net weight in terms of avoirdupois pounds or ounces.

Any unit of such thread, the net weight of which is less than two ounces avoirdupois, shall be marked to show its net measure in terms of yards as unwound from the ball or from the spool or other holder. Ready-wound bobbins which are not sold separately shall not be required to be individually marked, but the package containing such bobbins shall be marked to show the number of bobbins contained therein and the net weight or measure of the thread on each bobbin. Any retail unit of thread, sold only for household use, consisting of a package containing two or more similar individual units, which are not sold separately, shall be marked to show the number of individual units in the package and the net weight or measure of the thread in each individual unit, but this proviso shall not apply where the individual units are separately marked.

Amended by St.1950, c. 110, § 1.

§ 286. Sewing thread; identification of manufacturer or distributor

The marking as required in section two hundred and eighty-five shall in all cases be in combination with the name and place of business of the manufacturer or distributor of the thread, or a trade mark, symbol, brand or other mark which positively identifies such manufacturer or distributor, and which shall be filed with the director of standards.

Amended by St.1950, c. 110, § 2; St.1968, c. 467, § 24.

§ 287. Weight or measure variances

An average of not less than ten units of thread of the same type and put-up, selected at random from such units referred to in section two hundred and eighty-five, kept for the purpose of sale, offered or exposed for sale, or sold, shall not weigh or measure more than three per centum less than the net weight or number of yards marked on such units or on the package containing such units.

Amended by St.1950, c. 110, § 3.

§ 288. Penalty

A manufacturer, merchant, jobber, or trader who keeps for the purpose of sale, offers or exposes for sale, or sells any such units of thread which either are not marked or do not weigh or measure as provided in sections two hundred and eighty-five to two hundred and eighty-seven, inclusive, shall be punished by a fine of not more than fifty dollars.

Amended by St.1950, c. 110, § 4.

TURPENTINE, PAINTS AND LINSEED OIL

§ 289. Turpentine; manufacture; sale; marking; adulteration

No person shall manufacture, mix for sale, dispose of, offer or expose for sale, have in possession with intent to sell or dispose of, or sell under the name of turpentine, or spirits of turpentine, or under any name or phrase of which the word turpentine forms a part, or under any name or device illustrating or suggesting turpentine or spirits of turpentine, any article which is not wholly distilled from rosin, turpentine gum, or scrapings from pine trees, unmixed and unadulterated with any other substance, unless the package containing the same shall be stencilled or marked, with letters not less than two inches in height and one inch in width, "Adulterated Spirits of Turpentine", except that these letters upon packages of one gallon capacity, or less, may be reduced to one fourth of the said size. No person shall sell or deliver such adulterated spirits of turpentine without informing the purchaser at the time of sale that the article is not pure spirits of turpentine. Nothing herein contained shall be construed as prohibiting the manufacture or sale of such compound or imitation, if the container is plainly marked and the purchaser notified as aforesaid.

Whoever violates any provision of this section shall be punished for the first offence by a fine of one hundred dollars, for the second offence by a fine of two hundred dollars, and for a subsequent offence by a fine of five hundred dollars or by imprisonment for not more than one month, or both.

§ 290. Enforcement of section 289

The state police and all local police authorities shall enforce the preceding section.

§ 291. Sale of paint or linseed oil

No person shall sell, offer or expose for sale, or dispose of, or have in possession with intent to sell or dispose of, any paint or linseed oil which is labelled or marked in such manner as to deceive, or to tend to deceive, any person as to its nature or composition.

§ 292. Possession by dealer of incorrectly labeled turpentine, paint or linseed oil

The having in possession, by any person dealing in such articles, of any article or substance designated in section two hundred and eighty-nine or two hundred and ninety-one, and marked or labelled contrary to said sections, shall be prima facie evidence that the same is kept by such person in violation of the provisions thereof.

§ 293. Inspection of paint, etc.; complaint; appointment of inspectors; powers and duties

Upon the written complaint of any person aggrieved by any violation of section two hundred and eighty-nine or two hundred and ninety-one, the state police and their agents may enter any place of business, store or building where the sale of paint, turpentine or linseed oil is carried on, and open and inspect any package, can, jar, tub or other receptacle containing articles which might be sold or exposed for sale in violation of said sections, and may appoint and remove inspectors, analysts and chemists for the purpose of inspecting or analyzing the contents of any such receptacle. Inspectors so appointed shall have the same powers and authority relative to the articles aforesaid as are given by sections thirty-three, thirty-five and sixty to the inspectors named therein.

§ 294. Interference with inspector

Whoever hinders, obstructs or in any way interferes with any inspector, analyst or other officer appointed or acting under the preceding section while in the performance of his official duty shall be punished for the first offence by a fine of not more than fifty dollars, and for a subsequent offence by a fine of not more than one hundred dollars.

§ 295. Unlawful sale

Whoever violates any provision of section two hundred and ninety-one shall be punished by a fine of not less than twenty-five nor more than one hundred dollars or by imprisonment for not more than two months.

PETROLEUM PRODUCTS

§ 295A. Definitions

When used in sections two hundred and ninety-five A to two hundred and ninety-five W, inclusive:—

(1) The term "retail dealer" shall mean any person operating a service station, filling station, store, garage or other place of business for the retail sale of motor fuel or automotive lubricating oil or the sale of or dispensing of motor fuel for delivery into the service tank or tanks of any motor vehicle which is propelled by an internal combustion motor other than such a motor vehicle belonging to the person owning or operating said place of business.

(2) The term "motor fuel" shall mean (*a*) a light distillate of petroleum or allied substance with suitable volatility and other characteristics to be used as a fuel for operating internal combustion engines, whether or not it is mixed with other materials, or (*b*) any other product or liquid when sold for use as a fuel in any type of internal combustion engine furnishing power to operate a motor vehicle.

(2A) The term "automotive lubricating oils" shall mean any oil sold or offered for use as a fluid lubricant in any type of internal combustion engine used to propel any motor vehicle.

(3) The word "department" shall mean the department of labor and industries.

(4) The word "division" shall mean the division of standards in the executive office of consumer affairs.

(5) The word "director" shall mean the director of standards.

(6) The term "cost to the retail dealer" shall mean the cost of such motor fuel to the dealer plus the cost of doing business, including that part of the overhead of such dealer properly attributable to the sale of such motor fuel according to generally accepted methods of accounting procedure, which overhead shall include without limitation, labor (including the salaries of proprietors and corporate officials and others or a reasonable value for the services of such where no direct wage or salary is paid to them), rent (or a reasonable return on capital invested in real property used in said business) depreciation, selling costs (including gifts or premiums or other valuable considerations passing from the dealer to the purchaser in connection with the sale of motor fuel), maintenance of equipment, delivery costs, all types of licenses, taxes, insurance, and advertising.

Added by St.1939, c. 459, § 1. Amended by St.1950, c. 515, § 1; St.1960, c. 234, § 1; St.1962, c. 531, § 1; St.1968, c. 467, § 25; St.1969, c. 704, § 42.

§ 295B. Licensing of retail dealers

No retail dealer shall engage in the business of selling motor fuel or automotive lubricating oil at retail without first procuring from the division a license for each station, store, garage or other establishment at which his said business is to be conducted. Licenses issued under this section shall be issued upon written application to the division, shall be issued only to persons who own the business to be licensed and who are the owners or lessees of the premises on which the business is to be conducted, shall be effective from the date of their issuance until the first day of January of the ensuing year, and shall be renewed annually. A license fee of twenty-five dollars shall be paid for the issuance of every such license and every renewal thereof.

Each licensee shall conspicuously display his license at the station, store, garage or other establishment to which it pertains. The requirements of this section with respect to licenses are hereby declared to be in addition to, and not in substitution for, license requirements contained in any other statute, ordinance, by-law, rule or regulation.

The division shall forthwith notify the commissioner of revenue in writing of all licenses issued, renewed, transferred, modified, cancelled or suspended by it.

Added by St.1939, c. 459, § 1. Amended by St.1950, c. 497; St.1957, c. 443; St.1962, c. 531, § 2; St.1969, c. 622; St.1972, c. 684, § 12; St.1978, c. 514, § 192.

§ 295C. Display of price of motor fuel on dispensing devices

Every retail dealer in motor fuel shall publicly display and maintain on each pump or other dispensing device from which motor fuel is sold by him, at least one sign and not more than two signs stating the price per gallon of the motor fuel sold by him from such pump or device. Said sign or signs shall be of a size not larger than eight inches by ten inches. The price shown on each of such signs shall include all taxes imposed with respect to the manufacture or sale of the motor fuel sold at such pump or device, and every such sign shall either contain a statement of the taxes included in said price, or, without specifying the amount thereof, shall state that such taxes are included in said price. All figures, including fractions, upon said signs, other than figures and fractions used in any price computing mechanism constituting a part of any such pump or dispensing device, shall be of the same size.

No signs, advertising materials or other displays, other than the signs referred to in the preceding paragraph, shall be posted or displayed upon such pumps or other dispensing devices.

Amended by St.1939, c. 459, § 1; St.1978, c. 300.

§ 295D. Advertisement of motor fuel

Any advertisement of motor fuel by a retail dealer which states, refers to or relates to the price of motor fuel shall state the per gallon price thereof, which price shall include all taxes so stated, referred to or related to, and there shall be included in such advertising matter a statement that such per gallon price includes such taxes or a statement of the amount of such taxes which are included in the stated per gallon price.

Added by St.1939, c. 459, § 1.

§ 295E. Posting price on pump or other dispensing device; duration; selling price; rebates, premiums, etc.; restrictions; penalties; inapplicability to self-service pump dispensing

The price posted on any pump or other dispensing device from which motor fuel is sold, as required by section two hundred and ninety-five C, shall remain posted thereon and continue in effect thereat for a period of not less than twenty-four consecutive hours. No retail dealer shall sell motor fuel at any price other than the price so posted at the time of the sale. No premiums, rebates, allowances, concessions, prizes or other benefits shall be given directly or indirectly by any retail dealer so as to permit any purchaser to obtain motor fuel from such retail dealer at a net price lower than the posted price applicable at the time of the sale. In no transaction in which a retail dealer may fix or set a single price or charge for the sale of a quantity of motor fuel, together with some other commodity or service, shall such single price or charge be less than the aggregate of the charge, in accordance with the posted price, for the motor fuel involved in the transaction, plus the charge for such other commodity or service when the same is sold or rendered separately, rather than in combination with the sale of motor fuel.

Any retail dealer who sells and delivers motor fuel to a customer from a dispensing device, shall return the quantity indicator on the meter face to zero before each delivery by either automatic or manual means. A retail dealer shall not set the price indicator on the meter face of the dispensing device at a price per gallon higher than that posted on the dispensing device. Whoever violates any provision of the preceding two sentences shall, notwithstanding any contrary provision of section two hundred and ninety-five K, be punished by a fine of fifty dollars for the first offense and by a fine of one hundred dollars for each subsequent offense. The provisions of the first sentence of this paragraph shall not apply to motor fuel which is dispensed from a self-service pump operated by a customer.

Added by St.1939, c. 459, § 1. Amended by St.1971, c. 134; St.1978, c. 213.

§ 295F. Marking of brand name, etc., of product on above-ground storage or dispensing equipment

All above-ground equipment for storing or dispensing motor fuel or automotive lubricating oil operated by a retail dealer shall bear in a conspicuous place the brand name or trade-mark of the product stored therein or sold or dispensed therefrom. If the motor fuel or automotive lubricating oil stored in or sold or dispensed from above-ground equipment by a retail dealer has no brand name or trade-mark, such container or dispensing equipment shall have conspicuously displayed thereon the words "No Brand".

All equipment or containers used for the storage or dispensing of automotive lubricating oils made in whole or in part from previously used lubricating oils shall have displayed thereon the words "made from previously used lubricating oils". The size of the letters in said words shall be not less than size fourteen point type on two-gallon cans, or those holding a lesser quantity, and one inch high on all larger containers, but in no case shall the letters be smaller than those in any other words in the same descriptive panel.

All automotive lubricating oil containers shall bear, in a conspicuous place on the container, a number indicating the viscosity classification of the contents, such classification to be determined according to such standard methods as the division may from time to time prescribe.

Added by St.1939, c. 459, § 1. Amended by St.1955, c. 183; St.1960, c. 234, § 2.

§ 295G. Standards for gasoline; adulteration or substitution of motor fuel or lubricating oil

No person shall sell or offer to sell as gasoline any motor fuel or other substance which has an end point higher than four hundred and thirty-seven degrees Fahrenheit, when tested according to such standard methods as may, from time to time, be prescribed by order, rule or regulation under section two hundred and ninety-five I.

No person shall adulterate or permit the adulteration of any motor fuel or automotive lubricating oil offered for sale or sold under a brand name or trade-mark or distinguishing mark of the manufacturer or distributor of said products, or substitute or permit the substitution of any other motor fuel or automotive lubricating oil therefor. No person shall sell or dispense, or offer to sell or dispense, from any pump, tank or other dispensing device or container any motor fuel or automotive lubricating oil other than that indicated by the name, trade name, trade-mark, symbol, sign or other distinguishing mark of the manufacturer or distributor of said product, if any, appearing on said pump, tank or other dispensing device or container.

Every manufacturer or distributor of motor fuel or automotive lubricating oil shall submit samples of said products when requested by the division.

No person shall sell or offer to sell any automotive lubricating oil for automotive purposes which does not conform with the viscosity classification marked on the container, such classification to be determined according to such standard methods as the division may from time to time prescribe.

Added by St.1939, c. 459, § 1. Amended by St.1941, c. 311; St.1950, c. 496; St.1960, c. 234, § 3.

§ 295H. Administration and enforcement of sections 295A to 295O

The division shall administer and enforce sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive. For said purpose, the department, subject to appropriation, may appoint to the division such additional investigators, inspectors, analysts, clerks and other assistants as it may deem necessary.

Added by St.1939, c. 459, § 1.

§ 295*I*. Orders, rules and regulations; adoption; amendment; repeal

The division may adopt, amend, alter or repeal, and shall enforce, all such reasonable orders, rules and regulations as may be necessary or suitable for the administration and enforcement of said sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, and the division may, in such administration and enforcement, at any time cause to be made by its agents or representatives an audit, examination or investigation of the books, records, papers, vouchers, accounts and documents of any retail dealer, who shall make them available at any time upon oral or written demand to the division or any of its duly authorized agents or representatives.

Added by St.1939, c. 459, § 1.

§ 295J. Records of retail dealer

Every retail dealer shall keep such records as may be prescribed by the orders, rules or regulations adopted by the division under section two hundred and ninety-five I, and all such records shall be safely preserved by such retail dealer for a period of one year, and shall be offered for inspection at any time upon oral or written demand by the division or any of its duly authorized agents or representatives.

Added by St.1939, c. 459, § 1.

§ 295K. Penalty for violation of sections 295A to 295J

Whoever, himself or by his agent or servant, violates any provision of sections two hundred and ninety-five A to two hundred and ninety-five J, inclusive, except section two hundred and ninety-five G, shall be punished by a fine of not less than fifty nor more than five hundred dollars. Whoever, himself or by his agent or servant, violates any provision of section two hundred and ninety-five G shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year. Upon the second conviction of any licensee of any such violation, whether by himself or by his agent or servant, the division may suspend the right of such licensee to engage in the business of selling motor fuel at retail for a period not exceeding three months, and upon the third or subsequent conviction of any licensee of any such violation, whether by himself or by his agent or servant, the division may suspend such right for a period not exceeding one year.

Added by St.1939, c. 459, § 1.

§ 295L. Jurisdiction of superior court; injunctions

The superior court shall have jurisdiction in equity to enjoin the habitual, continued or repeated violation of any provision of sections two hundred and ninety-five A to two hundred and ninety-five J, inclusive, by any retail dealer. Petitions for such relief may be filed by any person injured or damaged by such violation.

Added by St.1939, c. 459, § 1.

§ 295M. Conflicts with other laws

Whenever the application of any provision of any other law of this commonwealth conflicts with the application of any provision of sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, said sections shall prevail.

Added by St.1939, c. 459, § 1.

§ 295N. Partial invalidity

If any provision of said sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of said sections, or the application of such provision to any person or circumstance other than that as to which it is held invalid, shall not be affected thereby.

Added by St.1939, c. 459, § 1.

§ 295*O*. Citation of sections 295A to 295*O*; Motor Fuel Sales Act

Sections two hundred and ninety-five A to two hundred and ninety-five O, inclusive, shall be known and may be cited as the "Motor Fuel Sales Act."

Added by St.1939, c. 459, § 1.

§ 295P. Retail sale of motor fuel below cost

No retail dealer shall, with intent to injure competitors or destroy substantially or lessen competition, advertise, offer to sell, or sell at retail motor fuel at less than cost to such retail dealer.

Added by St.1950, c. 515, § 2.

§ 295Q. Cost survey as evidence of cost

Where the retail dealers or any part thereof in a trading area have caused to be made by an independent agency a cost survey of doing retail business in such area in accordance with generally accepted methods of accounting in which survey all retail dealers in said area have been given an opportunity to furnish to the surveyor information from their books and records with respect to their cost of doing business and the said retail dealers have thereafter been given an opportunity to adopt or reject said survey by written approval, such cost-survey shall be deemed competent evidence in proving the cost to any such retailer.

Added by St.1950, c. 515, § 2.

§ 295R. Application of sections 295P to 295W to retail sales

The provisions of sections two hundred and ninety-five P to two hundred and ninety-five W, inclusive, shall not apply to sales at retail made:—

(*a*) Where motor fuel is advertised or offered for sale or sold upon the final liquidation of the business of said retail dealer.

(*b*) Where motor fuel is sold in good faith to meet the price of a competitor.

(*c*) Where motor fuel is advertised or offered for sale or sold by any fiduciary or other officer acting under the order or direction of any court.

Added by St.1950, c. 515, § 2.

§ 295S. Penalty for violating section 295P

Any retail dealer who violates any of the provisions of section two hundred and ninety-five P shall be punished by a fine of not more than one thousand dollars.

Added by St.1950, c. 515, § 2.

§ 295T. Jurisdiction of superior court; injunctions; prosecutions by district attorneys

On complaint of any retail dealer the superior court shall have jurisdiction in equity to restrain and enjoin any act declared illegal by any provision of sections two hundred and ninety-five P to two hundred and ninety-five W, inclusive, and it shall be the duty of the several district attorneys, in their respective districts, to prosecute all violators of any provision of said sections.

Added by St.1950, c. 515, § 2.

§ 295U. Conflicts with other laws

Whenever the application of the provisions of any other law of this commonwealth conflicts with the application of the provisions of sections two hundred and ninety-five P to two hundred and ninety-five W, said sections shall prevail.

Added by St.1950, c. 515, § 2.

§ 295V. Partial invalidity

If any provision of sections two hundred and ninety-five P to two hundred and ninety-five W, inclusive, or the application of such provision to any person or circumstance shall be held invalid, the remainder of said section or the application of such provision to person or circumstance other than those as to which it is held invalid, shall not be affected thereby.

Added by St.1950, c. 515, § 2.

§ 295W. Citation of sections 295P to 295W; Unfair Sales Act for the Retail Sale of Motor Fuels

Sections two hundred and ninety-five P to two hundred and ninety-five W, inclusive, shall be known and may be cited as the "Unfair Sales Act for the Retail Sale of Motor Fuels".

Added by St.1950, c. 515, § 2.

§ 295X. Repealed by St.1974, c. 7

SEAT SAFETY BELTS

§ 295Y. Repealed by St.1973, c. 216

PETROLEUM FUEL

§§ 295Z to 295BB. Repealed by St.1979, c. 796, § 12

WOOD AND BARK

§ 296. Measurers of wood and bark

A town and the city council of a city shall annually choose one or more measurers of wood and bark, who shall be sworn to the faithful performance of their duties and shall hold office during the year and until others are chosen and qualified in their stead. A town, by vote fixing the number to be chosen, may delegate the appointment of such measurers to the selectmen.

§ 297. Acting in adjoining towns

Such measurers may, in the manner prescribed for measurers of lumber in section eight of chapter ninety-six, be licensed to act in a town adjoining that for which they are elected or appointed.

§ 298. Cordwood, firewood and kindling wood; sale; measurement

Cordwood sold or offered or exposed for sale shall be four feet in length. The term "firewood" shall be construed to mean and include wood cut to any lengths of less than four feet and more than eight inches. Cordwood and firewood shall be advertised, offered for sale and sold only in terms of cubic feet or cubic meters which will be construed as indicating the closely stacked cubic foot or cubic meter content to be delivered to the purchaser. The terms "cord", "face cord", "pile", "truckload" or terms of similar import shall not be used in the advertising and sale of cordwood or firewood. The term "kindling wood" shall be construed to mean and include all split wood, edgings, clippings or other waste wood averaging eight inches in length. Except as provided by sections two hundred and forty-three and two hundred and forty-seven, the standard unit of measure for kindling wood shall be the bushel of two thousand one hundred and fifty and forty-two hundredths cubic inches.

Amended by St.1934, c. 109, § 1; St.1979, c. 253.

§ 299. Sale of cordwood or firewood; delivery ticket or sales invoice; violations

Whoever, except as otherwise provided, sells cordwood or firewood, shall cause a delivery ticket or sales invoice to be issued and delivered to the purchaser or his agent at the time of delivery of the wood. Such delivery ticket or sales invoice shall include the name and address of the seller and the purchaser, the quantity delivered to the purchaser in terms of cubic feet or cubic meters, the date delivered and the price of the quantity of wood delivered. Whoever violates any provision of this or the preceding section shall be punished for the first offense by a fine of fifty dollars, for the second offense by a fine of two hundred dollars and for each subsequent offense by a fine of five hundred dollars. Whoever alters or substitutes a delivery ticket or sales invoice for fraudulent or deceptive purposes shall be punished by a fine of not more than one thousand dollars.

Amended by St.1934, c. 109, § 2; St.1979, c. 253.

§ 300. Fees of measurers

Measurers of wood and bark shall be entitled to such fees for their services as the aldermen or selectmen shall establish; and the fees shall in each case be paid to the measurer by the driver and shall be repaid by the purchaser.

§ 301. Measurement of water borne wood; fees

Cord wood brought by water into a town for sale, and landed, shall be measured by a public measurer; and for that purpose the wood shall be corded and piled by itself in ranges, making up in height what is wanting in length, and, being so measured, a ticket shall be given to the purchaser, who shall pay the stated fees for such service. Towns may establish ordinances and by-laws, with suitable penalties, for the inspection, survey, measurement and sale of wood and bark for fuel brought therein for sale, and may also provide for the appointment of inspectors, surveyors and other officers and establish their fees.

§ 302. Tickets certifying quantity in load; application of sections 296 to 303

Each wharfinger, carter or driver who conveys firewood or bark from a wharf or landing place shall be furnished by the owner or seller with a ticket certifying the quantity which the load contains and the name of the driver; and if firewood or bark is thus conveyed without such ticket accompanying the same, or if a driver refuses to produce and show such ticket to any sworn measurer on demand, or to give his consent to have the same measured, or if such ticket certifies a greater quantity of wood or bark than the load contains in the opinion of such measurer after measuring the same, the driver and owner shall for each load thereof severally forfeit five dollars. Sections two hundred and ninety-six to three hundred and three, inclusive, shall not apply to a person who transports or carts or causes to be transported or carted from a wharf or landing place to his own dwelling house or store cord wood or bark which he has purchased on a wharf or landing place, or which he has landed thereon upon his own account.

§ 303. Sale of prepared wood, bark, slabs and edgings for fuel; surveyors and inspectors

The city council of a city may establish ordinances, with suitable penalties not exceeding five dollars for any one violation thereof, for the regulation of the sale of prepared wood, slabs and edgings for fuel, when sold by the load, and for the inspection, survey, measurement and sale of bark for fuel or manufacturing purposes brought into said city for sale, whether the same is exposed for sale in ranges or upon a vehicle; and said city may provide for the appointment of such surveyors, inspectors and other officers as may be necessary to carry into effect said ordinances and may establish their fees.

METHYL OR WOOD ALCOHOL

§ 303A. Licensing of manufacture, sale and transportation

No person other than a registered druggist shall engage in the business of manufacturing, buying, selling, transporting, importing, exporting or dealing in methyl alcohol, or wood alcohol, so called, or any preparation, other than shellac varnish or shellac solvent or paint remover or varnish remover, used for manufacturing or commercial purposes which contains more than three per cent of methyl alcohol and is intended for use other than as a beverage, without being licensed so to do as provided in section three hundred and three B.

Added by St.1934, c. 372, § 3. Amended by St.1935, c. 342; St.1936, c. 53.

§ 303B. Fees for licenses; renewals; suspensions; records

The board of health of a town may issue to properly qualified persons licenses to engage therein in the business described in section three hundred and three A. The fee for such a license shall be one dollar, which shall be paid into the town treasury. The department of public health may issue licenses to such persons to engage in such business anywhere within the commonwealth upon payment of a fee of ten dollars, which shall be paid into the state treasury. All licenses issued under this section shall expire twelve calendar months from the date of issue, and may at any time be suspended or revoked, for cause, by the issuing authority. Such authority shall keep a record of all licenses granted, suspended or revoked by it.

Added by St.1934, c. 372, § 3. Amended by St.1937, c. 177, § 1.

§ 303C. Marking containers

Every barrel, keg, bottle or other container containing methyl alcohol or wood alcohol, so called, or any drug or medicine intended for external use containing methyl alcohol shall bear in capital letters not less than three eighths nor more than one and one half inches in height, stencilled or printed thereon, the words "POISON, NOT FOR INTERNAL USE", or shall bear a label which shall include the word "POISON" and which shall conform to regulations prescribed by the department of public health, authority to prescribe such regulations and to amend or annul the same being hereby granted to said department. Whoever, himself or by his servant or agent, sells, exchanges or delivers any such alcohol, drug or medicine in any container not conforming to this section shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Added by St.1934, c. 372, § 3. Amended by St.1937, c. 177, § 2.

§ 303D. Sale by unlicensed person; sale to minors; sale for drinking purposes prohibited

The sale of methyl alcohol or wood alcohol, so called, or any preparation containing methyl alcohol as described in section three hundred and three A by a person not licensed as required by sections three hundred and three A and three hundred and three B, or by a licensee to a person under sixteen years of age or to any person without reasonable investigation and inquiry to determine that the same is not to be used for drinking purposes, shall constitute the offence of unlawful sale of alcohol and may be described as such in any complaint or indictment without more; but a person so charged shall be entitled to a bill of particulars in accordance with section forty of chapter two hundred and seventy-seven.

Added by St.1934, c. 372, § 3.

§ 303E. Penalty

Except as otherwise provided in section three hundred and three C, violation of any provision of sections three hundred and three A to three hundred and three D, inclusive, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1934, c. 372, § 3.

FUEL OILS

§ 303F. Delivery ticket; contents; use of copies; inspection; evidence; penalty

Whoever sells or delivers fuel oil in quantities of twenty gallons or over for heating or cooking purposes shall cause a delivery ticket, which shall consist of an original and at least one carbon copy thereof, to be issued. Said ticket shall be serially numbered for the purpose of identification and shall have the date of delivery as well as the names and addresses of the seller and of the purchaser legibly recorded on the ticket prior to delivery of the fuel oil. A statement of quantity of oil delivered, in terms of gallons and fractions thereof, if any, the price per gallon, the grade of fuel, and the identity of the person making such delivery, shall also appear on the ticket. One copy of the above said ticket shall be delivered to the purchaser or his agent at the time of delivery of such oil unless the purchaser initiates a request in writing that the vendor deliver such ticket to another person or location, or that the delivery of such ticket be made at another time. Another copy of the ticket shall be retained by the seller for a period of two months. The director or inspector of standards, sealer or deputy sealer, inspector or deputy inspector of weights and measures shall, at the time of delivery of fuel oil, be authorized to enter and go into or upon, without warrant, any such vehicle to inspect or examine the metering system, vehicle tank compartments and delivery tickets then in the actual possession or under the control of the person making the delivery and may seize, without warrant, any such delivery tickets suspected of constituting a deceptive or fraudulent practice. No copy or retained delivery ticket shall be destroyed but may be voided and kept on file.

On deliveries of fuel oils made through a meter the quantity determinations, of the oil delivered, shall be mechanically printed on the ticket at the time of delivery. A sales sequence number shall also be mechanically printed on the ticket by the ticket printing mechanism of the metering system, unless the printing mechanism is of the cumulative type. The sales sequence number shall not be returnable to zero until it has reached its highest attainable number. The provisions of the preceding two sentences of this paragraph will not become effective until January first, nineteen hundred and eighty and any metering system that has been sealed prior to January first, nineteen hundred and eighty shall be exempt from these provisions if their design prohibits compliance.

Only one delivery ticket may be inserted into the ticket printing mechanism and in the case of vehicle tank meters said ticket shall not be inserted until immediately before a delivery is begun, and in no case shall a ticket be left in the printing mechanism when the vehicle is in motion while on a public street, highway, or thoroughfare. The possession of a preprinted ticket imprinted with a gallonage amount in advance of delivery shall be prima facie evidence of intent to use such ticket in violation of this section.

Deliveries of fuel oil made from vehicle tank compartments, not measured at the time of sale by a sealed metering system, shall be made only from calibrated compartments which are filled to an indicator that has been sealed by a sealer or inspector of weights and measures. The preceding sentence shall not apply to the transfer, exchange or sale of fuel oil which is being transported between bulk storage facilities or to a purchaser who initiates a request in writing that he wishes to accept a carbon copy of the bulk storage metered loading ticket.

Whoever violates any provision of this section shall be punished for the first offense by a fine of fifty dollars, for the second offense by a fine of two hundred dollars and for each subsequent offense by a fine of five hundred dollars. Whoever alters or substitutes a delivery ticket for fraudulent or deceptive purposes shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year or both.

Added by St.1935, c. 95. Amended by St.1952, c. 107; St.1967, c. 92; St.1972, c. 597; St.1978, c. 444.

ANTI-FREEZE SOLUTIONS

§ 303G. Definitions

As used in this section and sections three hundred and three H to three hundred and three L, inclusive, the following words shall, unless the context otherwise requires, have the following meanings:

"Anti-freeze", any substance or preparation intended for use as the cooling medium, or to be added to the cooling liquid, in the cooling system of internal combustion engines to prevent freezing of the cooling liquid or to lower its freezing point.

"Division", the division of standards in the executive office of consumer affairs.

Added by St.1967, c. 481. Amended by St.1972, c. 323, § 1.

§ 303H. Minimum standards; adulteration

The division shall establish minimum standards of strength and quality for anti-freeze. An anti-freeze shall be deemed to be adulterated if it consists in whole or in part of any substance which will render it injurious to the cooling system of an internal combustion engine or will make the operation of the engine dangerous to the user; or if its strength, quality, or purity falls below the minimum standards of strength and of quality, as established by the director of the division.

Added by St.1967, c. 481.

§ 303I. Misbranded anti-freeze; labels for containers

An anti-freeze shall be deemed to be misbranded if its labeling is false or misleading in any particular; or if sold in a container which does not bear a label containing the name and place of business of the manufacturer, packer, seller or distributor and an accurate statement of the quantity of the contents in terms of weight or measure on the outside of the container.

Added by St.1967, c. 481.

§ 303J. Inspection of sample; issuance and cancellation of permits

No anti-freeze shall be sold, offered for sale, or held with intent to sell within the commonwealth unless a sample thereof has been inspected by the division and a permit for the sale thereof has been issued by the division. Upon application of the manufacturer, packer, seller, or distributor and the payment of a fee of twenty dollars for each brand of anti-freeze submitted, the division shall inspect such anti-freeze. If the anti-freeze is not adulterated or misbranded, the division shall give the applicant a written permit authorizing the sale of such anti-freeze within the commonwealth for a period expiring June thirtieth next.

If the division finds that any anti-freeze which is to be sold, offered for sale, or held with intent to sell has been altered or adulterated or that a change has been made in the name, brand or trade-mark under which said anti-freeze is to be sold, the division shall notify the licensee and cancel his permit forthwith.

Added by St.1967, c. 481. Amended by St.1968, c. 47, § 1.

§ 303K. Enforcement; samples; inspection of premises, etc.

The division shall administer and enforce the provisions of sections three hundred and three G to three hundred and three J, inclusive, by inspections, chemical analyses, and other appropriate methods. All samples for analysis shall be taken from stocks within the commonwealth or intended for sale therein, and the division may call upon the manufacturer or distributor applying for a license for the sale of an anti-freeze to supply a sample thereof for analysis. The division shall have free access by legal means during business hours to all places of business, buildings, vehicles, cars and vessels used in the manufacture, transportation, sale or storage of any anti-freeze, and it may open by legal means any box, carton, parcel, or package containing or supposed to contain any anti-freeze and may take therefrom samples for analysis.

The division may make such analyses, inspections, and investigations, and may carry on research and may publish the reports of such analyses, inspections and research for the information of the public.

Added by St.1967, c. 481.

§ 303L. Rules and regulations

The division may promulgate such rules and regulations as are necessary to promptly and effectively enforce the provisions of sections three hundred and three G to three hundred and three K, inclusive.

Added by St.1967, c. 481.

§ 303M. Penalty

Whoever violates any provision of section three hundred and three J shall be punished by a fine of not less than one hundred nor more than five hundred dollars for each offense.

Added by St.1967, c. 481.

GENERAL PROVISIONS AND PENALTIES

§ 304. Vendor to furnish sample for analysis, when; penalty

Whoever offers or exposes for sale or delivers to a purchaser any drug, cosmetic or device, or article of food, shall, upon application of an inspector, analyst or other officer or agent of the department of public health and upon tender of the value thereof, furnish a sample sufficient for the analysis of any such drug, cosmetic, device or article of food which is in his possession. Violation of this section shall be punished by a fine of not less than twenty-five nor more than five hundred dollars.

Amended by St.1961, c. 600, § 11.

§ 305. Fraud in packing commodities sold by weight; penalties

Whoever, with intent to defraud or injure, in baling or in packing in any container any commodity sold by weight, including wool, leather, cotton, waste, rags and paper, places therein any substance foreign to the contents thereof shall be punished for the first offence by a fine of not more than one hundred dollars, for the second offence by a fine of not more than two hundred dollars, and for a subsequent offence by a fine of fifty dollars and imprisonment for not less than one nor more than three months.

§ 305A. Improper manufacture, preparation, etc., of food; food defined; rules and regulations; penalties

Unless another penalty is provided under this chapter, whoever for the purpose of sale manufactures, prepares, packs, cans, bottles, keeps, exposes, stores, handles, serves, or distributes in any manner, food in or from an unclean, unsanitary or unhealthful establishment, place or vehicle or under unclean, unsanitary or unhealthful conditions shall be punished for the first offense by a fine of not more than one hundred dollars and for a subsequent offense by a fine of not more than five hundred dollars. For the purposes of this section, the word "food" shall mean and include all articles, whether simple, mixed, or compound, used or intended to be used for food or drink, confectionery or condiment, by human beings, except milk and cream. The commissioner of public health may promulgate and adopt such rules and regulations as he may deem necessary for the enforcement of this section. Any person violating any rule or regulation promulgated and adopted hereunder shall be punished for the first offense by a fine of not more than one hundred dollars or for a subsequent offense by a fine of not more than five hundred dollars.

Amended by St.1937, c. 362, § 5; St.1963, c. 487, § 2.

§ 305B. Medical examination of persons handling food; rules and regulations; employment of persons afflicted with disease; food defined

The commissioner of public health, on his own initiative or at the request of a local board of health, may require any person working in an establishment engaged wholly or in part in the business of producing, manufacturing, processing, storing or offering or exposing for sale any article of food and whose duties actually involve the handling of food during such production, manufacture, processing, storing or offering or exposing for sale, to submit to thorough examination by the department of public health, hereinafter called the department, or by the local board of health, if said commissioner has reason to believe that the examination of such person is necessary for the protection of the public health, to ascertain whether or not he is afflicted with any contagious, infectious or other disease or physical ailment which might render such employment detrimental to the public health, and whether or not, in the opinion of the department, he is a carrier, so called, of such a disease. Such examination shall be made by a physician duly registered and licensed to practice in the commonwealth, and shall be made without charge to the person examined and at the expense of the department or of the local board requesting it. Such examination may include the taking of samples of body fluids, secretions or excretions for examination. Any person so examined may have his physician present at the examination, and, at the request of the person so examined and at his expense, additional samples may be taken for examination at any laboratory approved by the department, but pending the report from the examination of such additional samples the person so examined shall be subject to the rules and regulations of the department made hereunder. The department, and local boards of health within their respective jurisdictions, shall enforce the provisions of this section, and the department may make rules and regulations consistent with said provisions to carry out the purposes thereof. No owner, manager or person in charge of such an establishment shall knowingly require or permit any person who is found upon examination to be afflicted or to be a carrier as aforesaid, or who refuses to submit to such examination, if required so to submit, to continue to work therein in the performance of duties actually involving the handling of food as aforesaid. Whoever violates any provision of this section or of any rule or regulation made thereunder shall be punished by a fine of not less than ten nor more than one hundred dollars. For the purposes of this section, the word "food" shall mean and include all articles, whether simple, mixed or compound, used or intended to be used for food or drink, confectionery or condiment, by human beings.

§ 305C. Certificate of registration; rules and regulations; application of section

No person engaged in the business of processing food for sale shall prepare, manufacture, pack, can, bottle, keep, expose, store, handle or distribute food without having obtained a certificate of registration from the department of public health. Said certificate of registration shall be valid so long as such person is engaged in said business, and said person shall notify the department upon the termination of his business. Said certificate of registration shall apply to one place of business only. The department shall send a copy of such registration to the board of health of the city or town in which said place of business is located. No person shall transport or cause to be transported into the commonwealth any bakery product for the purpose of sale without being registered as herein provided. The department may make such rules and regulations as may be necessary for the enforcement of this section.

This section shall not apply to any person who is a licensed common victualler, purveyor of fresh fruits and vegetables, a farmer who produces and sells raw farm products, including eggs, persons licensed under sections ten B, forty, forty-eight A, fifty-three, sixty-five H, sixty-six, one hundred and twenty of this chapter or licensed under chapter one hundred and thirty-eight, nor to any person who operates an establishment under the inspection of the meat inspection division of the bureau of animal industry of the United States department of agriculture, nor to retailers as defined in paragraph (*f*) of section fourteen E of chapter ninety-three.

Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five nor more than two hundred dollars.

Added by St.1956, c. 663, § 2. Amended by St.1970, c. 891, § 7.

§ 305D. Restaurants; devices or procedures to remove food lodged in persons' throats; insurance; tort immunity

Each restaurant, having a seating capacity of twenty-five persons or more, shall have on its premises a device approved by the department of public health that is designed and intended for use in removing food which may become lodged in a person's throat or each such restaurant shall have on its premises, when food is being served, an employee trained in manual procedures approved by the department of public health to remove food so lodged in a person's throat. The department of public health shall adopt regulations listing all approved devices and manual procedures which it determines may be used effectively to remove food lodged in a person's throat. Each such restaurant shall make adequate provisions for insurance to cover employees trained in rendering such assistance. Any person, or employee of any person who, in good faith, volunteers to remove or attempts to remove such food in an emergency shall not be liable for any civil damages as a result of any acts or omissions by such person or employee in rendering such emergency assistance.

Added by St.1975, c. 787. Amended by St.1978, c. 503.

§ 306. General penalty for counterfeit or wrongful branding or marking of articles

Unless another penalty is provided in this chapter, whoever counterfeits any brand required by this chapter or whoever without authority marks or brands any article required to be inspected, or marks or brands such article with a counterfeited brand, shall be punished by a fine of not more than two hundred dollars; and whoever alters or defaces any marks or brands made by an inspector of milk or collector of samples of milk under this chapter, unless another penalty is provided, shall be punished by a fine of not more than twenty-five dollars.

§ 307. Tobacco products contaminated by fire, smoke or water; possession or sale; penalty

No person shall deliver, sell, offer for sale or have in possession with intent to sell any cigarettes, cigars, tobacco, pipes or any other implement used for smoking, which may be inserted into the mouth or nostrils, which have been contaminated by fire, smoke or water resulting from fire or flood, without authority to so do from the division of food and drugs of the department of public health. Whoever violates the provision of this section shall be punished by a fine of not less than two hundred nor more than five hundred dollars, or by imprisonment for not more than six months.

Added by St.1958, c. 610.

VENDING MACHINES

§ 308. Definitions

In this section and sections three hundred and nine to three hundred and twelve, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

"Vending machine", any self-service device offered for public use which, upon insertion of a coin, coins, token, paper currency, or by other means, dispenses servings of food or beverage, either in bulk or in package.

"Machine location", a room, enclosure, space, area or building where a vending machine is installed or operated.

"Commissary", a catering establishment, restaurant, or any other place in which food, beverage and ingredients are processed or prepared and from which vending machines are serviced.

"Commissioner", the commissioner of public health.

"Operator", any person who by contract, agreement or ownership is responsible for furnishing, installing, servicing, operating or maintaining a vending machine.

Added by St.1963, c. 487, § 3.

§ 309. License; necessity; application; issuance; display; fees

No person shall engage in the operation of a vending machine without a license issued by the commissioner.

Any person desiring to operate a vending machine shall make application for a license to the commissioner on a form to be provided by him. The application shall state whether the applicant is an individual, firm, partnership or corporation; the name and address of the applicant, and if the applicant is a partnership, the name and address of each partner; the address of the applicant's principal place of business, and of each commissary servicing his vending machines; and it shall be signed by the applicant or applicants.

The commissioner after compliance by the operator with the applicable provisions of this chapter and upon receipt of the appropriate fee shall issue a license to operate a vending machine. Such license shall not be transferable. A label, of a size and style approved by the commissioner, bearing the operator's license number, shall be conspicuously displayed at each machine location.

The annual fees for licenses to operate vending machines shall be as follows:—

(1) For vending machines dispensing servings at a charge not in excess of two cents:

1 location	$ 0.50
2 to 10 locations	1.00
11 to 20 locations	5.00
21 to 50 locations	10.00
51 to 100 locations	15.00
101 to 200 locations	20.00
201 to 300 locations	25.00
301 or more locations	30.00

(2) For vending machines dispensing servings at a charge not in excess of nine cents:

1 location	$ 0.50
2 to 10 locations	2.00
11 to 20 locations	10.00
21 to 50 locations	20.00
51 to 100 locations	30.00
101 to 200 locations	40.00
201 to 300 locations	50.00
301 or more locations	60.00

(3) For vending machines dispensing pre-mixed carbonated beverages sealed in individual containers:

1 location	$ 0.50
2 to 10 locations	5.00
11 to 20 locations	10.00
21 to 50 locations	25.00
51 to 100 locations	50.00
101 to 200 locations	100.00
201 to 300 locations	150.00
301 or more locations	200.00

(4) For all other vending machines:

1 location	$ 0.50
2 to 10 locations	25.00
11 to 50 locations	100.00
51 or more locations	200.00

Added by St.1963, c. 487, § 3.

§ 310. List of locations; inspection of premises

Each licensee shall keep a list of all locations within the commonwealth wherein vending machines are operated by him and of all commissaries servicing such vending machines. Such information shall be available to the commissioner upon his request.

The commissioner or any authorized agent or employee shall, after proper identification, be permitted to enter, at any reasonable time, any premises wherein vending machines are operated, or any commissary servicing such machines for the purpose of inspecting the same. The licensee shall at the request of the commissioner make provision for the commissioner or any authorized agent or employee to have access, either in company with an employee of the operator or otherwise, to the interior of any vending machine operated by him.

Added by St.1963, c. 487, § 3.

§ 311. Suspension or revocation of license; notice and hearing; reinstatement of license

(*a*) A license to operate a vending machine may be suspended by the commissioner for violation of any provision of this chapter, or may be revoked for serious or repeated violations of any such provision.

(*b*) Whenever the commissioner finds that an operator has violated any applicable provision of this chapter or that unsanitary or other conditions exist in the operation of any vending machine or commissary, he shall issue a written notice to the operator citing the existence of such condition, specifying the corrective action to be taken, stating that a hearing on such findings shall be given upon the written request of the operator filed within ten days of the receipt of this notice, and advising the operator that unless such violation and condition is corrected within a specified and reasonable period of time his license may be suspended or revoked. When the necessary corrective action has been taken, the operator shall forthwith notify the commissioner who shall cause a new inspection to be made.

(*c*) After any hearing held under the provisions of this section, the commissioner shall sustain, modify or rescind any notice or order considered in the hearing.

(*d*) Any operator whose license has been suspended, may at any time make application for the reinstatement of the license. Within ten days after the receipt of a written application, accompanied by, or including, a statement signed by the operator to the effect that the conditions responsible for such suspension have been corrected and no longer exist, the commissioner shall cause a new inspection to be made. If the inspection satisfies the commissioner that the applicant is again complying with applicable provisions of law, the commissioner shall reinstate the license.

Added by St.1963, c. 487, § 3.

§ 312. Food, beverage and ingredients processed and prepared outside commonwealth; conditions for sale

Food, beverage and ingredients processed and prepared in commissaries outside the commonwealth may be sold in a vending machine within the commonwealth, if such commissaries conform to the provisions of law governing commissaries within the commonwealth, provided that the operator of said vending machine is licensed under the provisions of section three hundred and nine.

To determine the extent of compliance with such provisions, the commissioner may accept reports from the responsible authority in such jurisdictions outside the commonwealth where such commissaries are located.

Added by St.1963, c. 487, § 3.

§ 313. Penalties

Whoever violates any provision of sections three hundred and eight to three hundred and twelve, inclusive, or who continues to operate a vending machine after his license has been suspended or revoked, shall be punished for the first offense by a fine of not more than one hundred dollars and for a subsequent offense by a fine of not more than five hundred dollars.

Added by St.1963, c. 487, § 3.

ELECTRIC APPLIANCES

§ 314. Definitions applicable to sections 315 to 318

As used in sections three hundred and fifteen through three hundred and eighteen, inclusive, the following words and phrases shall, unless the context otherwise requires, have the following meanings:

"Appliance", an air conditioner, refrigerator, freezer or refrigerator-freezer which is not used or secondhand;

"Class of appliances", all appliances performing similar functions;

"Consumer", a person who purchases an appliance for use by himself or others and not for resale as a new appliance;

"Director", the director of the division of standards;

"Secretary", the secretary of the executive office of consumer affairs;

"Subclass of appliances", those appliances within a class of appliances which are determined by the secretary to be comparable in size, capacity or capability.

Added by St.1973, c. 891, § 1.

§ 315. Display or offer for sale, or sale, of certain appliances prohibited

No person shall display for sale to consumers or for promotional purposes an appliance required by the secretary to be labelled under the provisions of section three hundred and sixteen unless said appliance prominently bears a label complying with said provisions, and no person shall sell or offer for sale an appliance whose sale has been suspended under the provisions of section three hundred and seventeen.

Added by St.1973, c. 891, § 1.

§ 316. Labels required; regulations; information; form, etc.

The secretary may, in accordance with the provisions of chapter thirty A, adopt and amend regulations which require that each appliance in a class or subclass of appliances which is displayed for sale or for promotional purposes bear a label. The same regulations shall apply to each appliance in any subclass of appliances. The secretary may require said label to contain any or all of the following information, in such form as he may prescribe: (1) the cost in dollars or units of energy or both of operating the appliance during a year or any part of said year as determined under section three hundred and seventeen; (2) any numerical measure of efficiency which accurately reflects the relative efficiencies of all appliances within a class or subclass; and (3) a brief description of testing and computation procedures used to determine the above information.

The secretary shall prescribe the form of such labels and may establish procedures for their production, distribution and use, except that he may not require that any label be produced, distributed or affixed outside the commonwealth.

Added by St.1973, c. 891, § 1.

§ 317. Standardized computation and testing procedures; regulations; determination of energy cost and efficiency information; report of results by manufacturer, et al.; failure to report; false reports; enforcement remedies

The secretary may, in accordance with the provisions of chapter thirty A, adopt regulations for standardized computation procedures to be used to determine the information described in section three hundred and sixteen. The same computation procedures shall apply to each appliance in any subclass of appliances. Such procedures may provide for the computation of a range of annual energy costs as well as a single figure. The secretary may apply such computation procedures to any subclass of appliances for which there is available accurate and recent information concerning the efficiency of at least eighty per cent of the appliances in said subclass that are sold in the commonwealth. The secretary may prescribe standardized testing procedures for any appliances from such a subclass for which such information is not available. The same testing procedures shall apply to each such appliance in any subclass of appliances. He may require the director or manufacturers, distributors or importers to test such appliances in accordance with said standardized testing procedures and to report the results to him in such manner and within such time as he shall determine.

If a manufacturer, distributor, or importer fails to report such test results as required by the secretary or if such results are determined by the director to be false or misleading, the secretary may order the suspension of sales of the affected appliance within not fewer than five days. Any person aggrieved by such order may demand a hearing concerning such order, which hearing shall be conducted by the secretary or his designee within forty-five days of such demand in accordance with the provisions of chapter thirty A. If the secretary finds that the test results were not false or misleading, he shall rescind the order immediately. If a manufacturer, distributor, or importer reports to the secretary new test results which the secretary determines to be correct and complete, the secretary shall rescind the order within fourteen days from receipt of such report.

Added by St.1973, c. 891, § 1.

§ 318. Penalties; violations of sections 315 and 317

Whoever knowingly violates the provisions of section three hundred and fifteen shall be punished for each offense by a fine of not more than five hundred dollars. Whoever knowingly provides false or misleading information required under the provisions of section three hundred and seventeen shall be punished for each offense by a fine of not less than one thousand dollars nor more than ten thousand dollars, or imprisonment for not more than one year, or both.

Added by St.1973, c. 891, § 1.

METAL DRINK CONTAINERS

§ 319. Construction of malt beverage or soft drink metal containers

No person shall distribute, sell, or offer for sale any malt beverage or carbonated soft drink for consumption within the commonwealth in a metal can so constructed that in order to open the can a part may be moved which, by design, is not intended to remain attached to the open can. Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1977, c. 399, § 1.

CHAPTER 94A

MILK CONTROL

DEFINITIONS

Sec.
1. Definitions.

POWERS AND DUTIES OF BOARD

2. Powers and duties of milk control commission.

ENFORCEMENT

3. Enforcement by director; appeal; hearing; notice.

LICENSES

4. Licensing of milk dealers; exception; licenses for schools, hospitals and charitable institutions.

ENTRY, INSPECTION OF RECORDS AND REPORTS

13. Entry on premises for inspection; reports to director; results of inspection; definitions.

GENERAL PROVISIONS

25. Public interest; intention and purpose of statute.

DEFINITIONS

§ 1. Definitions

The following words as used in this chapter and in sections seven to nine, inclusive, of chapter twenty, unless the context otherwise requires, shall have the following meanings:

"Affiliate", any person, or any subsidiary thereof, having either directly or indirectly, actual or legal control of or over a milk dealer, whether by stock ownership or in any other manner.

"Books and records", books, records, accounts, contracts, memoranda, documents, papers, correspondence or other data pertaining to the business of the person in question.

"Commission", the milk control commission established under section seven of chapter twenty.

"Consumer", any person, other than a milk dealer, who purchases milk for consumption.

"Co-operative Association", a co-operative association, corporation or sales agency.

"Costs", includes, but shall not be limited to, the Class I price, payable under either state or federal milk marketing order, for the raw milk product F.O.B. the market and all costs for the following: acquiring; assembling; transporting; receiving; cooling; pasteurizing; clarifying; separating or standardizing; packaging; refrigerating; storing; all other phases of handling and processing; advertising; selling; trading stamps; delivery; sanitation and inspection; equipment and supplies, including containers and ingredients; taxes, licenses; insurance; rent; depreciation; maintenance; power; light; administration and all other overhead; excises or assessments made by statute or by provisions of a federal milk marketing order; labor, including salaries, wages, commissions and all fringe benefits; and interest paid or accrued on indebtedness.

"Director", the director of milk control referred to in section eight of chapter twenty.

"Fluid milk", any milk, other than cream, which is sold, distributed or used for any purpose other than manufacture of cream, ice cream, butter or cheese; or, in any market for which the board has by order, rule or regulation, established classification on the basis of use, such portion thereof as may from time to time be classified by such order, rule or regulation within the highest use classification for the market concerned.

"Licensee", a milk dealer licensed under any provision of this chapter or of similar provisions of earlier law.

"Market", one or more cities or towns, or any portion thereof, designated by the board as a natural milk marketing area within the commonwealth.

"Milk", includes whole milk and cream, fresh, sour or storage; skimmed milk and buttermilk; irrespective of whether or not any such milk is flavored.

"Milk dealer", any person, irrespective of whether such person is also a producer or an association of producers, who, on his own account or on behalf of producers, is engaged within the commonwealth in the business of receiving, purchasing, pasteurizing, bottling, processing, distributing or otherwise handling milk. No owner or operator of a hotel or restaurant who sells milk consumed on the premises where sold, and does not purchase or receive milk from producers, and no producer who delivers raw milk only to a milk dealer, shall be deemed a milk dealer for the purposes of this chapter.

"Person", any individual, partnership, association, corporation or other business entity, or a subsidiary or affiliate thereof.

"Producer", a person producing milk.

"Store", includes a grocery store, dairy products store or any similar mercantile establishment at which milk is sold for consumption off the premises.

"Subsidiary", any person of or over whom a milk dealer or an affiliate of a milk dealer has, or several milk dealers and their respective affiliates, or any of them collectively have, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

Added by St.1941, c. 691, § 2. Amended by St.1953, c. 604, § 2; St.1967, c. 768, § 1.

POWERS AND DUTIES OF BOARD

§ 2. Powers and duties of milk control commission

The commission shall have the following powers and duties, in addition to any others granted to it by any other provision of this chapter and by sections eight and nine of chapter twenty:—

(1) To designate and establish as markets the several natural milk marketing areas of the commonwealth; to supervise and regulate the milk industry of the commonwealth, including the production, purchase, receipt, sale, payment and distribution of milk within the commonwealth and the control of unreasonable and burdensome surplus of milk in any market coming from either within or without the commonwealth; to prescribe such regulations as shall tend (*a*) equitably to apportion the total value of the milk purchased or received by any dealer, or by all dealers in any market, among the producers delivering to such dealer or dealers, on the basis of their marketings of milk during a prior representative period, and (*b*) to encourage the production of a regular, continuous and adequate supply for such market or markets of fresh fluid milk conforming to law; and to promote programs designed to increase the consumption of milk;

(2) To investigate and regulate, as conditions permit and the purposes of this chapter require, all matters pertaining to markets, to the production, manufacture, processing, storage, transportation, disposal, distribution and sale of milk within the commonwealth, and to the establishment and maintenance of reasonable trade practices relative to milk;

(3) The commission may, after examination and investigation, and after hearing held after due notice, adopt all orders, rules and regulations, not inconsistent with law, which it deems necessary or desirable to administer or effectuate any of the purposes of this chapter. In the administration and enforcement of this section, the commission may appoint and consult and advise with representative com-

mittees and groups in the milk industry, which persons shall serve voluntarily and without compensation.

(4) No provision of this chapter conferring a general power upon the commission shall be deemed to be impaired or qualified by the granting to the commission of any specific power or powers.

(5) The commission may act as mediators and arbitrators in any controversy or issue among or between producers and milk dealers either as individuals or as groups, associations or corporations.

(6) Nothing in this chapter shall be construed to empower or authorize the adoption and enforcement of any public health rule or regulation by the commission.

Added by St.1941, c. 691, § 2. Amended by St.1953, c. 604, § 3; St.1955, c. 757, § 9.

ENFORCEMENT

§ 3. Enforcement by director; appeal; hearing; notice

Subject to the supervision and control of the commission, the director shall enforce the provisions of this chapter and all orders, rules and regulations of the commission.

Any person aggrieved by any act or decision of the director in such enforcement may, within such time as the commission by rule or regulation shall provide, appeal to the commission for a review thereof, and the commission shall grant such person a hearing after due notice.

Added by St.1941, c. 691, § 2. Amended by St.1953, c. 604, § 3.

LICENSES

§ 4. Licensing of milk dealers; exception; licenses for schools, hospitals and charitable institutions

(*a*) No milk dealer, except as provided in subsection (*b*), shall within the commonwealth buy or receive milk from producers or others, or sell or distribute milk, or pasteurize, bottle, package or otherwise process milk for sale, unless he is duly licensed as provided in this chapter, and no milk dealer shall buy milk from or sell milk to another milk dealer who, being required to be licensed, is not so licensed, or in any way deal in or handle milk which he has reason to believe has previously been dealt in or handled in violation of any provision of this chapter, or of any order, rule or regulation made thereunder.

(*b*) The commission, provided it shall first determine that such action will not adversely affect market conditions relative to milk, may by its order exempt from the operation of all or any portion of this chapter any milk dealer who purchases milk only from a licensed milk dealer, and whose only sales of milk are at a store.

(*c*) Licenses required by this chapter shall be in addition to any other license required by law.

(*d*) Any school, hospital, infirmary or other like charitable institution, located within the commonwealth and wholly supported by funds of the United States or of the commonwealth, or of any county, city, town or legally organized district within the commonwealth, and which purchases or receives from producers raw milk delivered in containers holding not less than twenty quarts each, and, on the premises of said institution, pasteurizes or otherwise processes the same for consumption on said premises, or uses the same in the manufacture of milk products for use or consumption on said premises, or proposes so to do, may make application, in the manner provided in section five, for a milk dealer license, which the commission is hereby authorized to grant.

Added by St.1941, c. 691, § 2. Amended by St.1953, c. 604, § 3.

ENTRY, INSPECTION OF RECORDS AND REPORTS

§ 13. Entry on premises for inspection; reports to director; results of inspection; definitions

(*a*) For the purpose of administering this chapter, any member of the commission, the director, or any employee or other representative designated by the commission or by him for the purpose, may enter, at all reasonable hours, every place where milk is being produced, stored, bottled or otherwise packaged, processed, sold or otherwise handled for sale or distribution. Any such person may also, at all reasonable hours, inspect and verify by reference to the actual operations and transactions all books and records relating to milk in any place within the commonwealth for the purpose of ascertaining facts required for proper administration of this chapter.

(*b*) All milk dealers required to be licensed under this chapter, their affiliates and subsidiaries, shall from time to time furnish to the director such information as the commission may by order, rule or regulation require, upon and in conformity to forms or reports approved by the commission and supplied by the director, for the purpose of enabling the director to administer and enforce this chapter and the orders, rules and regulations made by the commission thereunder. All such reports shall be on oath or made under the penalties of perjury.

(*c*) Each milk dealer required to be licensed under this chapter shall permit any member of the commission, the director, or any employee or other representative designated for the purpose by the commission or by him, at all reasonable hours, to enter any place occupied or controlled by such milk dealer where milk is produced, stored, bottled or otherwise packaged, pasteurized, processed, sold or otherwise handled. Each such dealer shall at all reasonable hours identify and make available to any such person all books and records relating to milk or to such milk dealer's business which are in his possession or custody or under his control, and permit such person to inspect and verify the same as provided in subsection *(a)*.

(d) The information obtained by any inspection authorized or reports required by this chapter or by similar provisions of earlier law shall be treated as confidential and shall not be disclosed by any person except as may be required in the proper administration of this chapter; provided, that the commission may use such information together with other similar information, for compilation and publication of statistics of the milk industry in this commonwealth. Such statistics shall not contain the name of, or disclose, by inference or otherwise, information obtained from the books and records of any milk dealer.

(e) Except as to markets in which there is in operation and effect an order or regulation issued by the legally constituted authorities of the United States regulating the marketing of milk in such markets, and except as to markets in which there is in operation and effect an order issued by the commission regulating the marketing of milk in such markets upon a market-wide pool basis, each milk dealer required to be licensed under this chapter, except a milk dealer eligible for exemption under subsection *(b)* of section four, and except a milk dealer who is also a producer selling to consumers not more than fifty quarts of milk daily, shall, within such period as the commission by order, rule or regulation requires, but not later than ten days after the close of each delivery period with respect to milk or cream received by such milk dealer, file with the director, in detail and form approved by the commission, a report as follows:—

(1) The receipts at each plant from producers, including the quantity, if any, of his own production;

(2) The receipts at each plant from any other milk dealer, including a milk dealer who is also a producer;

(3) The respective quantities of milk which were sold, distributed or used within each market, including sales to other milk dealers, in each use classification established by the commission.

The director shall compute for each such milk dealer who purchases or receives milk from producers on the composite or on a base rating plan the percentage of milk sold, distributed or used by him in each such use classification and, notwithstanding the provisions of subsection *(d)*, shall announce by mail, postage prepaid, to all such milk dealers and to all milk producers associations within the commonwealth the results of such computation, and the minimum composite price, or minimum base and excess prices which on the basis of said report such milk dealer, pursuant to the orders, rules and regulations of the commission, is required to pay per hundredweight of milk containing three and seven tenths per cent butter fat content, delivered to the plant of such milk dealer by producers during each delivery period.

Such announcement shall be made on or before the fifteenth day after the end of each delivery period. If any such milk dealer receives milk from producers at more than one plant subject to the provisions of this subsection, such percentage and such minimum price or prices shall be separately computed and announced by the director for each such plant.

The words "delivery period", as used in this subsection, shall mean, with respect to milk dealers who buy no milk from producers, a monthly period beginning on the first day of each month and, with respect to all other milk dealers, the delivery period applicable to such milk dealers as determined by order of the commission. The composite plan and base rating plan referred to in this subsection shall mean the composite plan and base rating plan as determined by order of the commission.

(*f*) Subsection (*e*) shall be construed as being in addition to and in no way limiting the power and authority of the commission under subsection (*b*).

Added by St.1941, c. 691, § 2. Amended by St.1945, c. 134; St.1946, c. 312; St.1953, c. 604, § 3.

GENERAL PROVISIONS

§ 25. Public interest; intention and purpose of statute

It is hereby declared that the production and distribution of milk is an industry affected with a paramount public interest relating to the public health. The intention and purpose of this chapter is hereby declared to extend to the regulation of said industry and to the control of all milk sold or offered for sale in the commonwealth, to the full extent permitted by the constitutions of the commonwealth and of the United States, respectively.

Added by St.1941, c. 691, § 2.

CHAPTER 94B

HAZARDOUS SUBSTANCES

HAZARDOUS SUBSTANCES LABELING LAW

Sec.
1. Definitions.
2. Commissioner; general powers.
3. Prohibited acts.
4. Penalties for violation of section 3; exceptions.
5. Embargo; notice; destruction or return of articles; exports.
6. Inspection; access to premises; penalties.
7. Examination of records.
8. Repurchase of banned hazardous substances.
9. Publication of reports and dissemination of information pertaining to hazardous substances.
10. Citation.

DISTRIBUTION OF PESTICIDES

11 to 17. Repealed.

ADMINISTRATION AND ENFORCEMENT

18 to 21. Repealed.

APPLICATION OF PESTICIDES

21A to 22. Repealed.

HAZARDOUS SUBSTANCES LABELING LAW

§ 1. Definitions

The following words as used in this chapter, unless the context otherwise requires shall have the following meanings:

"Banned hazardous substance", any toy, or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance susceptible of access to a child, or is otherwise hazardous because it presents electrical, mechanical or thermal hazards; or any hazardous substance intended or packaged in a form suitable for use in households, which the commissioner by regulation classifies as a "banned hazardous substance" on the basis of a finding that notwithstanding cautionary labeling required under this chapter, the degree or nature of the hazard involved in the presence or use of the substance in households is such that the protection of the public health and safety can be adequately served only by keeping the substance out of the channels of commerce. The commissioner, by regulation, shall, however, exempt articles, such as chemical sets, which by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard, and which bear labeling giving adequate direction and warnings for safe use and are intended for use by children who have attained sufficient maturity and who may reasonably be expected to read and heed these warnings.

"Combustible", any substance or mixture of substances which has a flash point from eighty degrees to and including one hundred and fifty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester.

"Commerce", any and all commerce within the commonwealth, including the operation of any business or service establishment.

"Commissioner", the commissioner of public health.

"Corrosive", any substance which when in contact with living tissue will cause destruction of such tissue by chemical action.

"Department", the department of public health.

"Director", the director of the division of food and drugs in the department.

"Division", the division of food and drugs in the department.

"Electrical hazard", an article which in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture, may cause personal injury or illness by electrical shock.

"Extremely flammable", when used with respect to a substance, any substance which has a flash point at or below twenty degrees Fahrenheit as determined by the Tagliabue Open Cup Tester.

"Flammable", when used with respect to a substance, any substance which has a flash point of above twenty degrees to and including eighty degrees Fahrenheit, as determined by the Tagliabue Open Cup Tester; when used with respect to all items of wearing apparel in sizes 0 through 6X intended to be worn primarily for sleeping or activities related to sleeping and for fabric or related material intended or promoted for use in such wearing apparel, which exceeds the acceptance criteria specified in the federal children's sleepwear standard, DOC FF 3–71, and determined by an appropriate test performed in accordance with said standard; or when used with respect to all items of wearing apparel in sizes 7 through 14 intended to be worn primarily for sleeping or activities related to sleeping and for fabric or related material intended or promoted for use in such wearing apparel, which exceeds the acceptance criteria specified in the federal children's sleepwear standard, FF5–74, and determined by an appropriate test performed in accordance with said standard; provided, that the flammability of solids and of the contents of self-pressurized containers shall be determined by methods generally recognized as applicable to such containers and established by regulations issued by the commissioner.

"Hazardous substance", any substance or mixture of substances which is toxic, corrosive, an irritant, a strong sensitizer, flammable or which generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonable foreseeable ingestion by children, or any toy or other article intended for use by children which presents an electrical, mechanical or thermal hazard. It shall include any radioactive substance if, with respect to such substance as used in a particular class of article or as packaged, the commissioner determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health. It shall not include economic poisons subject to the Federal Insecticide, Fungicide and Rodenticide Act,[1] unless the commissioner finds that such economic poison is not adequately labeled for the protection of the public health, nor foods, drugs and cosmetics subject to the Federal Drug and Cosmetic Act [2] or to chapter ninety-four, nor substances intended for use as fuels when stored in containers and used in heating, cooking, or refrigeration systems. It shall include any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act but which is a hazardous substance within the meaning of this definition by reason of bearing or containing such economic poison.

"Highly toxic", when used with respect to a substance, any substance which (*a*) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered; or (*b*) produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, when inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or (*c*) produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, when administered by continous contact with the bare skin for twenty-four hours or less; provided that if the commissioner finds that available data on human experience with any substance indicate results different from those obtained on animals with the aforesaid dosages or concentrations, the human data shall take precedence.

"Immediate container", excludes a package liner.

"Inspector", an inspector of the division of food and drugs in the department.

"Irritant", any substance not corrosive which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

"Label", a display of written, printed, or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly on the article involved or on a tag or other suitable material affixed thereto, and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and on all accompanying literature where there are directions for use, written or otherwise.

"Mechanical hazard", an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness from fracture, fragmentation or disassembly of the article, from propulsion of the article or any part or accessory thereof, from points or other protrusions, surfaces, edges, openings or closures, from moving parts, from lack or insufficiency of controls to reduce or stop motion, as a result of self-adhering characteristics of the article, because the article or any part or accessory thereof may be aspirated or ingested, because of instability, or any other aspect of the article's design or manufacture.

"Misbranded package" or "misbranded package of a hazardous substance", a hazardous substance in a container, or not in a container if the substance can be handled or transported without one, which is intended or suitable for household use or personal use and which, except as otherwise provided by or pursuant to section two, fails to bear a label which states prominently in the English language, in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label, (*a*) the name and place of business of the manufacturer, packer, distributor or seller; (*b*) the common or usual name or the chemical name, if there be no common or usual name, of the hazardous substance or of each component which contributes substantially to its hazard, unless the commissioner by regulation permits or requires the use of a recognized generic name; (*c*) the signal word "DANGER" on substances which are corrosive, extremely flammable or highly toxic; (*d*) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (*e*) an affirmative statement of the principal hazard or hazards, such as "Flammable", "Vapor Harmful", "Causes Burns", "Absorbed Through Skin", or similar wording descriptive of the hazard; (*f*) precautionary measures describing the action to be followed or avoided, except when modified by regulations of the commissioner pursuant to section two; (*g*) instructions, when necessary or appropriate, for first-aid treatment; (*h*) the word "POISON" for any hazardous substance which is defined as "highly toxic" by this section; (*i*) instructions for handling and storage of packages which require special care in handling or storage; and (*j*) the statement "Keep out of reach of children", or its practical equivalent.

"Person", includes an individual, partnership, corporation, association, or legal representative or agent.

"Radioactive substance", a substance which emits ionizing radiation.

"Strong sensitizer", a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the commissioner. Before designating any substance as a strong sensitizer, the commissioner, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has a significant potential for causing hypersensitivity.

"Thermal hazard", an article which, in normal use or when subjected to reasonably foreseeable damage or abuse, by its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

"Toxic", when used with respect to a substance, any substance, other than a radioactive substance, which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

Added by St.1960, c. 727, § 1. Amended by St.1972, c. 506, § 1; St.1973, c. 649, §§ 1, 2; St.1974, c. 642, §§ 1, 2.

[1] 7 U.S.C.A. § 135 et seq.

[2] 21 U.S.C.A. § 301 et seq.

§ 2. Commissioner; general powers

(*a*) Whenever in the judgment of the commissioner such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the commissioner may by reasonable rules and regulations declare to be a hazardous substance, for the purpose of this chapter, any substance or mixture of substances which he finds meets the requirements of the same term as defined in section one.

(*b*) If the commissioner finds that the requirements of section one, as to labeling of a "misbranded hazardous substance" are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may by regulation establish such reasonable variations of additional label requirements as he finds necessary for the protection of the public health and safety; and any hazardous substance intended, or packaged in a form suitable, for use in the household or by children, which fails to bear a label in accordance with these regulations shall be deemed to be a misbranded hazardous substance.

(*c*) If the commissioner finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, he shall promulgate regulations exempting the substance from these requirements, to an extent he determines consistent with adequate protection of the public health and safety.

(*d*) If the commissioner finds that an article subject to this chapter cannot be labeled adequately to protect the public health and safety, or the article presents an imminent danger to the public health and safety, he may declare the article to be a banned hazardous substance and require its removal from commerce.

The commissioner shall cause the regulations promulgated under this chapter to conform, insofar as practicable, with the regulations established pursuant to the Federal Hazardous Substances Act.[1]

Added by St.1960, c. 727, § 2. Amended by St.1972, c. 506, § 1.

[1] 15 U.S.C.A. § 1261 et seq.

§ 3. Prohibited acts

(*a*) No person shall sell, expose for sale, deliver, give away, have in his possession, introduce or deliver for introduction into commerce any misbranded hazardous substance or banned hazardous substance.

(*b*) No person shall alter, mutilate, destroy, obliterate or remove the whole or any part of the label of, or do any other act with respect to, any hazardous substance if such act is done while the substance is in commerce or held for sale, whether or not the first sale, and such act results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance.

(*c*) No person shall receive in commerce any misbranded hazardous substance or banned hazardous substance and deliver or proffer delivery thereof for pay or otherwise.

(*d*) No person shall give a guarantee or undertaking referred to in section four which guarantee or undertaking is false, except in reliance upon a guarantee or undertaking to the same effect signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance.

(*e*) No person shall sell, expose for sale, deliver, give away, have in his possession, introduce or deliver for introduction into commerce, or receive in commerce and subsequently deliver or proffer delivery for pay or otherwise, any hazardous substance in a reused food, drug or cosmetic container or in a container which though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification. The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this paragraph, the terms "food", "drug", and "cosmetic" shall have the same meaning as in section one of chapter ninety-four.

(*f*) No person shall manufacture any hazardous substance that is misbranded with the intent that the same be distributed or sold in violation of this chapter.

(*g*) No person shall use to his own advantage, or reveal other than to the commissioner or officers or employees of the department or to the courts when relevant in any judicial proceeding under this chapter or to a physician treating a patient for potential poisoning any information acquired under authority of sections six and seven concerning any method or process which as a trade secret is entitled to protection.

Added by St.1960, c. 727, § 3. Amended by St.1972, c. 506, § 1.

§ 4. Penalties for violation of section 3; exceptions

Any person who violates any of the provisions of section three shall be punished for a first offense by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment for not more than ninety days, or both; and for a second and subsequent offenses, shall be punished by imprisonment for not more than one year, or a fine of not less than six hundred dollars nor more than three thousand dollars, or both; provided, however, that no person shall be subject to such penalties for having violated the provisions of paragraph (*c*) of section three if the receipt, delivery, or proffered delivery of the hazardous substance, was made in good faith, unless he refused to furnish on request of an officer or employer duly designated by the commissioner the name and address of the person from whom he purchased or received such hazardous substance, and copies of all documents, if any there be, pertaining to the delivery of the hazardous substances to him; or for having violated paragraph (*d*) of section three if he establishes a guarantee or undertaking signed by, and containing the name and address of, the person residing in the United States from whom he received in good faith the hazardous substance, to the effect that the hazardous substance is not a misbranded hazardous substance or a banned hazardous substance within the meaning of those terms in this chapter, or for having violated paragraph (*a*) of section three in respect to any hazardous substance shipped or delivered for shipment for export to any foreign country, in a package marked for export on the outside of the shipping container and labeled in accordance with the specifications of the purchaser and in accordance with the laws of the United States or of the foreign country.

Added by St.1960, c. 727, § 4. Amended by St.1972, c. 506, § 1.

§ 5. Embargo; notice; destruction or return of articles; exports

(*a*) Whenever the director or his duly authorized inspector finds or has probable cause to believe that any hazardous substance is misbranded, or is a banned hazardous substance within the meaning of this chapter, he shall affix or cause to be affixed to such article a tag or other appropriate marking, giving notice to the manufacturer of the substance, the distributor, and the owner thereof, that such article is, or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the director, his inspector, or the court, provided, any such article may at the discretion of the manufacturer, distributor or owner thereof be removed from public display but shall not be removed from the immediate premises. Such manufacturer, distributor or owner shall be authorized to destroy the article so detained if such article is destroyed under the supervision of the director, or his inspector. When an article detained or embargoed has been found to be a misbranded or banned hazardous substance, the director or his agent shall within thirty-days file a petition in any district or municipal court within whose jurisdiction the article is detained or embargoed for a libel of condemnation of such article. When such inspector has found that an article so detained or embargoed is not a misbranded or banned hazardous substance, he shall remove the tag or other marking; thereby permitting its release. Such toy or other article shall be deemed to be a banned hazardous substance for purposes of this chapter until the proceeding has been completed.

(*b*) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, such article shall, after entry of the decree, be destroyed at the expense of the manufacturer, distributor or owner thereof, under supervision of such inspector, and all court costs and fees, and storage and other proper expenses, shall be taxed against him of such article or his agent; provided, that when the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled, has been executed may by order direct that such article be returned to such person for such labeling under the supervision of an inspector of the commissioner. The expense of such supervision shall be paid by such manufacturer, distributor or owner. The article shall be returned to such manufacturer, distributor or owner on the representation to the court by the commissioner that the article is no longer in violation of this chapter and that the expenses of such supervision have been paid.

This section shall not apply to a hazardous substance intended for export to any foreign country if it (1) is in a package branded in accordance with the specifications of the foreign purchaser, (2) is labeled in accordance with the laws of the foreign country, and (3) is labeled on the outside of the shipping package to show that it is intended for export, and (4) is so exported.

Added by St.1960, c. 727, § 5. Amended by St.1972, c. 506, § 1.

§ 6. Inspection; access to premises; penalties

(*a*) For the purpose of administering the provisions of this chapter, the director and inspectors shall have access and entry at reasonable times to any premises pursuant to a search warrant duly issued by a court of competent jurisdiction, provided that no sample of an alleged hazardous substance obtained in the course of such inspection and no result of any analysis or test of any such sample shall be received in evidence in any criminal proceeding under this chapter unless the sample shall have been taken and the analysis or test conducted in accordance with the procedure provided in sections one hundred and eighty-eight and one hundred and eighty-nine of chapter ninety-four.

(*b*) Any person who obstructs the director or an inspector from entering premises under a valid search warrant where a hazardous substance is kept as provided in section six, or any person who does not comply with the provisions of section seven, shall be punished by a fine of not less than five hundred nor more than two thousand dollars or by imprisonment for not more than six months, or both.

Added by St.1960, c. 727, § 6. Amended by St.1972, c. 506, § 1.

§ 7. Examination of records

For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce, and persons storing or receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the commissioner acting under authority of a search warrant duly issued by a court of competent jurisdiction, permit such officer or employee at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

Added by St.1960, c. 727, § 7. Amended by St.1972, c. 506, § 1.

§ 8. Repurchase of banned hazardous substances

In the case of any article or substance sold by its manufacturer, distributor, or dealer which is a banned hazardous substance, whether or not it was such at the time of its sale, such article or substance shall, in accordance with regulations of the commissioner, be repurchased as follows:

(*a*) The manufacturer of any such article or substance shall repurchase it from the person to whom he sold it, and shall refund to that person the purchase price paid for such article or substance. If that person repurchased such article or substance pursuant to the provisions in this section, the manufacturer shall reimburse him for any amounts paid in connection with its repurchase, and reimburse such person for any reasonable and necessary expenses incurred in returning it to the manufacturer.

(*b*) The distributor of any such article or substance shall repurchase it from the person to whom he sold it, and shall refund to that person the purchase price paid for such article or substance. If that person has repurchased such article or substance pursuant to the provisions of this section, the distributor shall reimburse him for any amounts paid for the return of such article or substance in connection with its repurchase and reimburse that person for any reasonable and necessary expenses incurred in returning it to the distributor.

(*c*) In the case of any such article or substance sold at retail by a dealer, if the person who purchased it from the dealer returns it to him, the dealer shall refund the purchase price paid for it and reimburse him for any reasonable and necessary transportation charges incurred in its return.

For the purpose of this section, (1) the term "manufacturer" includes an importer for resale, and (2) a dealer who sells at wholesale an article or substance shall with respect to that sale be considered the distributor of that article or substance.

Added by St.1972, c. 506, § 1.

§ 9. Publication of reports and dissemination of information pertaining to hazardous substances

(*a*) The commissioner may cause to be published from time to time reports summarizing any judgments, decrees or court orders which have been rendered under this chapter including the nature of the charge and the disposition thereof.

(*b*) The commissioner may also cause to be disseminated information regarding hazardous substances in situations involving, in the opinion of the commission, possible danger to health. Nothing in this section shall be construed to prohibit the commissioner from collecting, reporting and illustrating the results of his investigations.

Added by St.1972, c. 506, § 1.

§ 10. Citation

Sections one to nine, inclusive, may be cited and referred to as the hazardous substances labeling law.

Added by St.1960, c. 727, § 10.

DISTRIBUTION OF PESTICIDES

§§ 11 to 17. Repealed by St.1978, c. 3, § 2

ADMINISTRATION AND ENFORCEMENT

§§ 18 to 21. Repealed by St.1978, c. 3, § 2

APPLICATION OF PESTICIDES

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CHAPTER 94C

CONTROLLED SUBSTANCES ACT

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§ 1. Definitions

As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

"Administer", the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by—

(*a*) a practitioner, or

(*b*) a nurse at the direction of a practitioner in the course of his professional practice, or

(*c*) an ultimate user or research subject at the direction of a practitioner in the course of his professional practice.

"Agent", an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

"Bureau", the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice, or its successor agency.

"Class", the lists of controlled substances for the purpose of determining the severity of criminal offenses under this chapter.

"Clinical research", any systematic investigation or study carried out in connection with the good faith professional practice of medicine, dentistry, or podiatry for the alleviation of pain and suffering or for the treatment or alleviation of disease. Such clinical research shall be deemed to be within the meaning of the term "in the course of professional practice" as used in this chapter.

"Commissioner", the commissioner of public health.

"Controlled substance", a drug, substance, or immediate precursor in any schedule or class referred to in this chapter.

"Counterfeit substance", a substance which is represented to be a particular controlled drug or substance, but which is in fact not that drug or substance.

"Deliver", to transfer, whether by actual or constructive transfer, a controlled substance from one person to another, whether or not there is an agency relationship.

"Department", the department of public health.

"Depressant or stimulant substance",

(*a*) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or any derivative of barbituric acid which the United States Secretary of Health, Education, and Welfare has by regulation designated as habit forming; or

(*b*) a drug which contains any quantity of amphetamine or any of its optical isomers; any salt of amphetamine or any salt of an optical isomer of amphetamine; or any substance which the United States Attorney General has by regulation designated as habit forming because of its stimulant effect on the central nervous system; or

(*c*) lysergic acid diethylamide; or

(*d*) any drug except marihuana which contains any quantity of a substance which the United States Attorney General has by regulation designated as having a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

"Dispense", to deliver a controlled substance to an ultimate user or research subject or to the agent of an ultimate user or research subject by a practitioner or pursuant to the order of a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary for such delivery.

"Distribute", to deliver other than by administering or dispensing a controlled substance.

"Drug",

(*a*) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(*b*) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(*c*) substances, other than food, intended to affect the structure, or any function of the body of man and animals; or

(*d*) substances intended for use as a component of any article specified in clauses (*a*), (*b*) or (*c*), exclusive of devices or their components, parts or accessories.

"Immediate precursor", a substance which the commissioner has found to be and by rule designates as being a principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

"Isomer", the optical isomer, except that wherever appropriate it shall mean the optical, position or geometric isomer.

"Manufacture", the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, including any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(*a*) by a practitioner as an incident to his administering a controlled substance in the course of his professional practice, or

(*b*) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale, or

(*c*) by a pharmacist in the course of his professional practice.

"Marihuana", all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake or the sterilized seed of the plant which is incapable of germination.

"Narcotic drug", any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(*a*) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(*b*) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (*a*), but not including the isoquinoline alkaloids of opium;

(*c*) Opium poppy and poppy straw;

(*d*) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

"Nurse", a nurse registered or licensed pursuant to the provisions of section seventy-four or seventy-four A of chapter one hundred and twelve, a graduate nurse as specified in section eighty-one of said chapter one hundred and twelve or a student nurse enrolled in a school approved by the board of registration in nursing.

"Opiate", any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section two, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts, dextromethorphan. It does include its racemic and levorotatory forms.

"Opium poppy", the plant of the species Papaver somniferum L., except its seeds.

"Oral prescription", an oral order for medication which is dispensed to or for an ultimate user, but not including an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse, or practical nurse.

"Person", individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

"Pharmacist", any pharmacist registered in the commonwealth to dispense controlled substances, and including any other person authorized to dispense controlled substances under the supervision of a pharmacist registered in the commonwealth.

"Pharmacy", a facility under the direction or supervision of a registered pharmacist which is authorized to dispense controlled substances, including but not limited to "retail drug business" as defined below.

"Poppy straw", all parts, except the seeds of the opium poppy, after mowing.

"Practitioner",

(*a*) A physician, dentist, veterinarian, podiatrist, scientific investigator, or other person registered to distribute, dispense, conduct research with respect to, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in the commonwealth;

(*b*) A pharmacy, hospital, or other institution registered to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in the commonwealth.

"Prescription drug", any and all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: "Caution. Federal law prohibits dispensing without prescription".

"Production", includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

"Registrant", a person who is registered pursuant to any provision of this chapter.

"Registration", unless the context specifically indicates otherwise, such registration as is required and permitted only pursuant to the provisions of this chapter.

"Registration number", such registration number or numbers, either federal or state, that are required with respect to practitioners by appropriate administrative agencies.

"Retail drug business", a store for the transaction of "drug business" as defined in section thirty-seven of chapter one hundred and twelve.

"Schedule", the list of controlled substances established by the commissioner pursuant to the provisions of section two for purposes of administration and regulation.

"State", when applied to a part of the United States other than Massachusetts includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

"Tetrahydrocannabinol", tetrahydrocannabinol or preparations containing tetrahydrocannabinol excluding marihuana except when it has been established that the concentration of delta-9 tetrahydrocannabinol in said marihuana exceeds two and one-half per cent.

"Ultimate user", a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for the use of a patient in a facility licensed by the department or for administering to an animal owned by him or by a member of his household.

"Written prescription", a written order for medication which is dispensed to or for an ultimate user, but not including an order for medication which is dispensed for immediate administration to the ultimate user by a practitioner, registered nurse or practical nurse.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 1 to 6; St.1973, c. 1190, §§ 1 to 6.

§ 2. Regulations establishing schedules of drugs or other substances controlled; factors determinative of control or removal; exclusions

(*a*) For the purpose of administration and regulation of the manufacture, distribution, dispensing, and possession of controlled substances by persons authorized under this chapter, the commissioner shall establish by regulations pursuant to the provisions of chapter thirty A five schedules incorporating the five schedules of controlled substances under the "Comprehensive Drug Abuse, Prevention and Control Act of 1970" [1] or any amendment thereof. In addition thereto the commissioner shall by regulation as aforesaid establish a sixth schedule which shall include all prescription drugs not included in the first five schedules.

(*a½*) The commissioner may, pursuant to the provisions of chapter thirty-A, delete or reschedule all substances enumerated in the schedules established pursuant to the provisions of subsection (*a*) except that if any substance which has not been scheduled pursuant to the provisions of this section is designated a controlled substance under the Federal Comprehensive Drug Abuse, Prevention and Control Act of 1970 or any amendment thereof [1a], or if any substance which has been scheduled pursuant to the provisions of this section is designated a controlled substance of greater abuse liability under the Federal Comprehensive Drug Abuse, Prevention and Control Act of 1970 or any amendment thereof, the commissioner, pursuant to the provisions of chapter thirty A, shall, not more than thirty days after publication of final notice in the federal register or not more than thirty days after the effective date of any federal statute affecting the scheduling of controlled substances under said federal act or any amendment thereof, issue a regulation controlling the substance in a schedule corresponding to the federal schedules.

(*b*) In making any finding under subsection (*a*) of this section or under subsection (*a*) of section three, the commissioner shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

(1) Its actual or relative potential for abuse.

(2) Scientific evidence of its pharmacological effect, if known.

(3) The state of current scientific knowledge regarding the drug or other substance.

(4) Its history and current pattern of abuse.

(5) The scope, duration and significance of abuse.

(6) What, if any, risk there is to the public health.

(7) Its psychological or physiological dependence liability.

(8) Whether the substance is an immediate precursor of a substance already controlled under this chapter.

(*c*) The commissioner acting jointly with the board of registration in pharmacy shall by regulation pursuant to the provisions of chapter thirty A exclude any non-narcotic substance from a schedule if such substance may, under the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970 [2] " and the Food, Drug, and Cosmetic Act [3], be lawfully sold over the counter without a prescription.

(*d*) Authority to control under this section shall not extend to distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954.[4]

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 7.

[1] See 21 U.S.C.A. §§ 811, 812.
[1a] See 21 U.S.C.A. § 812.
[2] 21 U.S.C.A. § 801 et seq.
[3] 21 U.S.C.A. § 301 et seq.
[4] 26 U.S.C.A. (I.R.C.1954) § 5001 et seq.

§ 3. Schedules of drugs or other substances; findings required

Except in the case of an immediate precursor, a drug or other substance may not be placed in any schedule unless such drug or substance has been scheduled pursuant to the provisions of the Federal Comprehensive Drug Abuse, Prevention and Control Act of 1970, or any amendment thereof [1], or unless the findings required for such schedule are made with respect to such drug or other substance. The findings required for each of the schedules are as follows:

(1) SCHEDULE I.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has no currently accepted medical use in treatment in the United States.

(C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

(2) SCHEDULE II.—

(A) The drug or other substance has a high potential for abuse.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.

(C) Abuse of the drug or other substances may lead to severe psychological or physical dependence.

(3) SCHEDULE III.—

(A) The drug or other substance has a potential for abuse less than the drugs or other substances in schedules I and II.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.

(4) SCHEDULE IV.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule III.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule III.

(5) SCHEDULE V.—

(A) The drug or other substance has a low potential for abuse relative to the drugs or other substances in schedule IV.

(B) The drug or other substance has a currently accepted medical use in treatment in the United States.

(C) Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV

(6) SCHEDULE VI.—

(A) The substance is a prescription drug; and

(B) Said prescription drug has not been included in Schedules I through V.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 8.

[1] See 21 U.S.C.A. § 812.

§ 4. Exceptions by regulation; rescission or revocation

The commissioner acting jointly with the board of registration in pharmacy may by regulation pursuant to the provisions of chapter thirty A except any compound, mixture or preparation containing any substances in paragraph (*a*) or (*b*) of Schedule III or in Schedule IV, V or VI established pursuant to the provisions of section two from the application of all or any part of this chapter if

(1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and

(2) such ingredients are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system, and

(3) the compound, mixture, or preparation has been similarly excepted under the provisions of the Federal "Comprehensive Drug Abuse, Prevention and Control Act of 1970", or any amendment thereof.[1]

Such regulation shall state the weight of the controlled substance per fluid ounce, or if a solid or semi-solid preparation the weight in the avoirdupois amounts, and if the metric system is used, the weight in grams per hundred cubic centimeters in the case of a fluid, or the weight per gram in the case of a solid or semi-solid preparation.

The commissioner shall by regulation modify, rescind or revoke an exception whenever it has been modified, rescinded or revoked under the provisions of the Federal Comprehensive Drug Abuse, Prevention and Control Act of 1970 or any amendment thereof.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 9.

[1] 21 U.S.C.A. § 801 et seq.

§ 5. Dispensing controlled substances excepted under section 4; conditions; record book

Controlled substances which are excepted pursuant to section four may be dispensed, or sold at retail, except that the exception authorized by this section shall be subject to the following conditions:

(1) that such preparation shall be dispensed, or sold in good faith as a medicine, and not for the purpose of evading the provisions of the controlled substances law; (2) that the purchaser of such preparation identify himself to the satisfaction of the pharmacist; and (3) that of such preparation not more than four ounces are dispensed, or sold to a person during any 48 hour period.

The pharmacist dispensing such excepted substances shall keep an accurate record book including the name and address of the purchaser, the name of the preparation, the strength per dosage unit, the quantity dispensed and the date.

Added by St.1971, c. 1071, § 1.

§ 6. Rules and regulations

The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may promulgate rules and regulations relative to registration and control of the manufacture, distribution, dispensing and possession of controlled substances within the commonwealth.

Added by St.1971, c. 1071, § 1.

§ 7. Registration of persons who manufacture, distribute, dispense or possess controlled substances; exceptions

(*a*) Except in the case of a pharmacy or wholesale druggist, every person who manufactures, distributes or dispenses, or possesses with intent to manufacture, distribute, or dispense any controlled substance within the commonwealth shall upon payment of a fee of ten dollars register with the commissioner, in accordance with his regulations, said registration to be effective for one year from the date of issuance. Every wholesale druggist shall register with the board of registration in pharmacy in accordance with its regulations. Such registration shall be effective until July first, nineteen hundred and seventy-four, if such registration is issued prior to July first, nineteen hundred and seventy-four. Such registration shall be effective until January first, nineteen hundred and seventy-six, if such registration is issued between July first, nineteen hundred and seventy-four, and January first, nineteen hundred and seventy-six. Such registration shall be effective until the end of the calendar year in which said registration is issued if registration is issued subsequent to December thirty-first, nineteen hundred and seventy-five; provided, that such wholesale druggist shall pay a registration fee of twenty-five dollars for any initial registration issued prior to July first, nineteen hundred and seventy-four, and shall pay any registration fee of thirty-seven dollars and fifty cents for a registration which is issued between July first, nineteen hundred and seventy-four, and January first, nineteen hundred and seventy-six. Such wholesale druggist shall, commencing January first, nineteen hundred and seventy-six, pay an annual registration fee of twenty-five dollars for each year or any part thereof. For the purposes of this section, "wholesale druggist" shall mean any person who distributes controlled substances at wholesale. Every pharmacy shall register with the said board in accordance with its regulations. Such registration shall be effective until July first, nineteen hundred and seventy-four, if any registration is issued prior to July first, nineteen hundred and seventy-four. Such registration shall be effective until January first, nineteen hundred and seventy-six, if such registration is issued between July first, nineteen hundred and seventy-four, and January first, nineteen hundred and seventy-six. Such registration shall be effective until the end of the first uneven numbered year following the date of issuance of such registration if such registration is issued subsequent to December thirty-first, nineteen hundred and seventy-five; provided, that such pharmacy shall pay a registration fee of twenty-five dollars for an initial registration issued prior to midnight of July first, nineteen hundred and seventy-four, and shall pay a registration fee of thirty-seven dollars and fifty cents for any registration issued between July first, nineteen hundred and seventy-four, and January first, nineteen hundred and seventy-six, and shall, commencing January first, nineteen hundred and seventy-six, pay a biennial registration fee of twenty-five dollars for every two years, or any part thereof.

(*b*) Every person who is engaged in the qualitative or quantitative analysis of controlled substances within a scientific laboratory shall, upon payment of a fee of ten dollars obtain a registration issued by the commissioner in accordance with his rules, said registration to be effective for one year from date of issuance.

(*c*) A person registered under this chapter to manufacture, distribute, dispense, or possess controlled substances may possess, manufacture, distribute, or dispense those substances to the extent authorized by his registration and in conformity with the other provisions of this chapter.

(*d*) The following persons shall not require registration and may lawfully possess and distribute controlled substances:

(1) an agent or employee of any manufacturer, distributor, or dispenser registered under this chapter, if he is acting in the usual course of his business or employment, except that a salesman, detail man or other field representative of a registered manufacturer, wholesaler, jobber or dealer in controlled substances may not possess any controlled substance in schedule I, II, III, IV, or V of section three for the purpose of demonstrating, displaying, selling, or distributing as samples said controlled substances to a practitioner;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) any public official or law enforcement officer acting in the regular performance of his official duties;

(4) a registered nurse or licensed practical nurse when acting under the supervision of a practitioner;

(5) a graduate of a school for nurses or practical nurses which has been approved in accordance with the provisions of chapter one hundred and twelve, whenever said person is acting under the supervision of a practitioner and is engaged in professional practice during the period from such person's graduation from said school until the announcement of the results of the first licensing examination for registered nurses or licensed practical nurses, as the case may be, thereafter held in accordance with the provisions of said chapter one hundred and twelve;

(6) any person duly licensed to practice nursing within any other jurisdiction, whenever such person is acting under the supervision of a practitioner and is discharging official duties as an employee of the federal government;

(7) any person covered by clauses (1), (2), (3) and (5) of section eighty B of chapter one hundred and twelve when any such person is acting under the supervision of a practitioner;

(8) any therapist, technician, or medical student when performing under the supervision of a practitioner those services which are defined to be functions of their respective callings;

(9) any person who belongs to a class of persons which is authorized by regulation of the commissioner to provide services for the purpose of diagnosis, care, treatment, or research.

(*e*) An ultimate user or research subject may lawfully possess or administer a controlled substance at the direction of a practitioner in the course of his professional practice.

(*f*) Notwithstanding any other provision of this section, the commissioner shall, upon receipt of the fee as hereinbefore provided, automatically issue to any physician, dentist, podiatrist or veterinarian who is duly authorized to practice his profession in the commonwealth a registration to dispense, other than for research pursuant to section eight, unless the registration of such physician, dentist, podiatrist, or veterinarian has been supended or revoked pursuant to the provisions of sections thirteen or fourteen or unless said registration is denied for cause by the commissioner pursuant to the provisions of chapter thirty A. Such registration shall continue in full force and effect unless it is suspended or revoked, or unless it is recalled and a new registration issued in accordance with the rules and regulations of the commissioner.

(*g*) The commissioner may by regulation authorize the registration for a specific activity or activities requiring registration under this section of such persons as he determines to be qualified for such registration.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 684, §§ 13 to 15; St.1973, c. 1190, §§ 7 to 9; St.1973, c. 1220; St.1974, c. 770.

§ 8. Research projects; narcotic drugs; human subjects; federal approval; protocol; rules and regulations; records and access thereto; termination orders; dispensing of drugs; restrictions

(*a*) No person shall carry out any research project or study involving any narcotic drug in Schedule II or the investigational use on human beings of any new drug as defined in section two hundred and one (*p*) of the Federal Food, Drug and Cosmetic Act, as amended [1], unless he supplies the commissioner and the commissioner of mental health with satisfactory evidence of compliance with any applicable federal law, and, if the commissioner so requires, with a protocol describing the research project or study to be undertaken.

(*b*) The commissioner shall pursuant to the provisions of chapter thirty A promulgate rules and regulations establishing standards for such protocol and requiring, among such other conditions relating to the protection of the public health that the commissioner may prescribe, the establishment and maintenance of records and the making of reports to the commissioner of data, including but not limited to analytical reports by investigators, obtained as the result of the investigational use of the drug. The commissioner may waive any or all such conditions with respect to a particular research project or study described in this section if he deems it consistent with the public interest.

(*c*) The commissioner shall, after due notice and opportunity for hearing pursuant to the provisions of chapter thirty A, issue an order that such research project or study be terminated if the commissioner finds (1) that the drug under investigation is unsafe under the conditions of use; or (2) that the investigators lack the necessary training and experience to conduct such research project or study; or (3) that the research protocol contains any untrue statement of a material fact, provided, that if the commissioner finds that there is an imminent hazard to health he shall order that the research project or study be discontinued upon notice and afford those persons who are undertaking the research the opportunity for an expedited hearing. The commissioner may also, after due notice and opportunity for a hearing pursuant to the provisions of chapter thirty A order that a research project or study be discontinued if the commissioner finds (1) that the persons who are undertaking the research have failed to establish a system for maintaining required records, or have repeatedly or deliberately failed to maintain such records or to make reports which are required by the commissioner or the persons undertaking the research project or study have refused to permit access to or copying or verification of such records; or (2) the methods used in, or the facilities and controls used for the research project or study are inadequate to safeguard against unlawful diversion of the drug under investigation.

(*d*) Every person who is required pursuant to the provisions of this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the commissioner permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(*e*) No person who undertakes research pursuant to the provisions of this section shall use as a subject for such research any human being unless such subject or his legal representative has given in writing his informed consent based upon information about the nature, duration and purpose of the investigation; the method and means by which it is to be conducted; all inconveniences and hazards reasonably to be expected; and the effects upon the subject's health or person which may reasonably be expected to come from his participation.

(*f*) A person who is conducting research pursuant to the provisions of this section may to the extent authorized by the commissioner and in conformity with the provisions of this section dispense any drug for investigational use without an oral or written prescription.

(*g*) Notwithstanding any other provision of this section, the administering or dispensing directly or prescribing of narcotic drugs listed in any schedule to a narcotic drug dependent person for the purpose of continuing his dependence upon such drugs in the course of conducting an authorized clinical investigation pursuant to a narcotic addict rehabilitation program shall be deemed to be within the meaning of the term "in the course of professional practice" as used in this chapter, provided, that federal approval, if such approval is required by federal law, is obtained prior to the initiation of such a program, and satisfactory evidence of such approval is submitted to the commissioner.

(*h*) Notwithstanding the provisions of paragraphs (*a*) to (*g*), inclusive, this section shall not apply to any drug recognized as safe and which has been exempted by section one hundred and seven of the Federal Drug Amendments Act of 1962 [2] from the operation of sections two hundred and one (*p*) and five hundred and five of the Federal Food, Drug and Cosmetic Act, as amended [3].

(*i*) Whoever knowingly or intentionally violates any provision of this section shall be punished for each offense by imprisonment in a jail or house of correction for not more than one year or by a fine of not more than one thousand dollars, or both.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 10, 11; St.1974, c. 359.

[1] 21 U.S.C.A. § 321(p).

[2] See 21 U.S.C.A. § 321 note.

[3] 21 U.S.C.A. §§ 321(p), 355.

§ 9. Administering and dispensing of controlled substances by registered physicians, dentists, podiatrists and veterinarians in course of professional practice; records; inspection

(*a*) A physician, dentist, podiatrist, or veterinarian, when duly registered pursuant to the provisions of section seven and when acting conformably with the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970" or any amendment thereof [1], the Federal Food, Drug and Cosmetic Act [2], and any provision of this chapter which is consistent with Federal laws, in good faith and in the course of his professional practice for the alleviation of pain and suffering or for the treatment or alleviation of disease, may possess such controlled substances as he may reasonably require for the purpose of patient treatment and may administer controlled substances, or he may cause the same to be administered under his direction by a nurse.

(*b*) Notwithstanding the provisions of section seventeen, a physician, dentist, podiatrist, or veterinarian who is duly registered pursuant to the provisions of section seven, when acting in good faith and in the legitimate practice of medicine, dentistry, podiatry or veterinary medicine, or a nurse when authorized by a physician, dentist, podiatrist, or veterinarian in the course of said nurse's professional practice, may dispense by delivering to an ultimate user a controlled substance in a single dose or in such quantity as is in the opinion of the physician, dentist, podiatrist or veterinarian essential for the proper treatment of the patient; provided, that such amount or quantity of said controlled substance shall not exceed that needed for the immediate treatment of the patient and that all further such controlled substances required by the person as part of his treatment shall be dispensed by prescription to the ultimate user in accordance with the provisions of this chapter.

For purposes of this subsection the words "immediate treatment" shall mean that quantity of a controlled substance which is necessary for the proper treatment of the patient until it is possible for him to have a prescription filled by a pharmacy.

(*c*) A nurse who has obtained from a physician, dentist, podiatrist or veterinarian a controlled substance for dispensing to an ultimate user pursuant to the provisions of subsection (*b*) of this section or for administration to a patient pursuant to the provisions of subsection (*a*) of this section during the absence of such physician, dentist, podiatrist, or veterinarian shall return to such physician, dentist, podiatrist, or veterinarian any unused portion of such substance which is no longer required by the patient.

(*d*) Every physician, dentist, podiatrist, or veterinarian shall in the course of his professional practice keep and maintain records, open to inspection by the commissioner or by his specially authorized agent during reasonable business hours, which shall contain the names and quantities of any controlled substance in Schedule I, II, or III received by the practitioner; the name and address of the patient for whom the controlled substance is administered or dispensed; the name, dosage, and strength per dosage unit of such controlled substance; and the date of administration or dispensing.

Added by St.1971, c. 1071, § 1. Amended by St.1973, c. 1190, §§ 10 to 13.

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[1] 21 U.S.C.A. § 801 et seq.

[2] 21 U.S.C.A. § 301 et seq.

§ 10. Separate registration

A separate registration shall be required at each principal place of business or professional practice where the registrant manufactures, distributes, or dispenses controlled substances.

Added by St.1971, c. 1071, § 1. Amended by St.1973, c. 1190, § 14.

§ 11. Inspection of establishments of registrants or applicants

The board of registration in pharmacy in the case of a pharmacy and the commissioner in any case may inspect in accordance with his or its rules and regulations the establishment of a registrant or applicant for registration pursuant to the provisions of this chapter.

Added by St.1971, c. 1071, § 1.

§ 12. Registration to manufacture or distribute controlled substances; factors considered

(*a*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases shall register an applicant to manufacture or distribute controlled substances included in the schedules established pursuant to section two unless he determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board of registration in pharmacy in the case of a retail drug store or a wholesale druggist and the commissioner in all other cases shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable federal, state and local law;

(3) any conviction of the applicant under any federal and state law relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under the provisions of this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(*b*) Registration under subsection (*a*) of this section shall not entitle a registrant to manufacture or distribute controlled substances in Schedules I or II established pursuant to the provisions of section two except to the extent specified in the registration.

Added by St.1971, c. 1071, § 1.

§ 13. Suspension or revocation of registration; hearing; findings; report of criminal violations; controlled substances affected placed under embargo; disposition; forfeiture; notice to bureau

(*a*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may suspend or revoke a registration to manufacture, distribute, dispense or possess a controlled substance, after a hearing pursuant to the provisions of chapter thirty A upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under the provisions of this chapter;

(2) has been convicted under any state or federal law of any criminal violation relating to his fitness to be registered under this chapter;

(3) has had his federal registration suspended or revoked to manufacture, distribute, dispense, administer or possess controlled substances; or

(4) is, upon good cause, found to be unfit or unqualified to manufacture, distribute, dispense, or possess any controlled substance.

(*b*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may pursuant to the provisions of this section or section fourteen suspend or revoke any registration issued by him or it for violation of any provision of this chapter.

(*c*) Whenever the commissioner, the board of registration in pharmacy, or the commissioner of mental health has substantial reason to believe that a registrant has committed a criminal violation of any provision of this chapter, he or it shall promptly report all pertinent facts to the district attorney in the county where the violation is believed to have occurred, or to the attorney general.

(*d*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exists.

(*e*) If the board of registration in pharmacy in the case of a retail drug business or wholesale druggist or the commissioner in all other cases suspends or revokes a registration, all controlled substances which are affected by such suspension or revocation order at the time of suspension or the effective date of the revocation order shall be placed under embargo pursuant to the procedures prescribed in sections one hundred and eighty-nine and one hundred and eighty-nine A of chapter ninety-four. No disposition may be made of substances under such embargo until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the commonwealth under the provisions of section forty-seven.

(*f*) The board of registration in pharmacy in the case of a retail drug business or wholesale druggist and the commissioner in all other cases shall promptly notify the bureau of all orders suspending or revoking a registration and all forfeitures of controlled substances.

Added by St.1971, § 1. Amended by St.1972, c. 806, §§ 12, 13.

§ 14. Suspension of or refusal to renew registration pending proceedings in cases of imminent danger to public; dissolution or withdrawal

The board of registration in pharmacy in the case of a retail drug business or wholesale druggist or the commissioner in all other cases may without hearing suspend or refuse to renew any registration if he finds that there is an imminent danger to the public health or safety which warrants this action, provided he promptly affords the registrant an opportunity for a hearing under chapter thirty A. The suspension shall continue in effect until the conclusion of the proceedings including judicial review thereof, unless sooner dissolved by a court of competent jurisdiction, or withdrawn by the board of registration in pharmacy in the case of a retail drug business or wholesale druggist, or withdrawn by the commissioner in any other case.

Added by St.1971, c. 1071, § 1.

§ 15. Record–keeping and inventory requirements

Persons registered to manufacture, distribute, dispense, or possess controlled substances shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of the Federal "Comprehensive Drug Prevention and Control Act of 1970" or any amendment thereof,[1] and the Federal Food, Drug and Cosmetic Act,[2] and with any additional rules or regulations promulgated by the board of registration in pharmacy in the case of a retail drug business or wholesale druggist or by the commissioner in all other cases.

Added by St.1971, c. 1071, § 1.

[1] Sec 21 U.S.C.A. § 827.
[2] 21 U.S.C.A. § 301 et seq.

§ 16. Distribution between registrants; order form

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to such order form as may be required by the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970" or any amendment thereof [1] and the Federal Food, Drug, and Cosmetic Act.[2]

Added by St.1971, c. 1071, § 1.

[1] See 21 U.S.C.A. § 828.
[2] 21 U.S.C.A. § 301 et seq.

§ 17. Prescription; necessity for dispensing controlled substances; emergency

(*a*) No controlled substance in Schedule II may be dispensed without the written prescription of a practitioner, except that—

(*b*) In emergency situations, as defined by rule or regulation of the commissioner acting jointly with the board of registration in pharmacy, drugs in said Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy, pursuant to the provisions of subsection (*a*) of section twenty.

(*c*) A controlled substance included in Schedule III, IV, V or VI shall not be dispensed without a written or oral prescription of a practitioner.

Added by St.1971, c. 1071, § 1.

§ 18. Prescription; issuance by qualified practitioner only; communication by agent if oral

(*a*) A prescription for a controlled substance may be issued only by a practitioner who is;

(1) authorized to prescribe controlled substances; and

(2) registered pursuant to the provisions of this chapter.

(*b*) An oral prescription issued by a practitioner may be communicated to a pharmacist by an expressly authorized employee or agent of the practitioner.

(*c*) A prescription for a controlled substance may also be issued by any physician who is licensed or registered in a contiguous state and who resides or practices in said state provided that such physician is registered with the commissioner subject to such rules and regulations as he may establish. Such registration shall be valid only for the purpose of authorizing the filling of prescriptions within the commonwealth and shall not authorize such physician to possess, administer or dispense controlled substances as provided in section nine, or to practice medicine within the commonwealth. Any prescription issued under this paragraph shall be issued in the manner prescribed in section twenty-two and all relevant provisions of this chapter shall apply to such physician and prescription.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 14; St. 1976, c. 498.

§ 19. Prescription; issuance by practitioner in course of professional treatment or research; responsibilities; penalties; general dispensing to patients prohibited; dispensing of drugs or controlled substances to drug dependent persons restricted

(*a*) A prescription for a controlled substance to be valid shall be issued for a legitimate medical purpose by a practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is not a prescription within the meaning and intent of section one and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided by section thirty-two.

(*b*) No prescription shall be issued in order for a practitioner to obtain controlled substances for supplying the practitioner for the purpose of general dispensing to patients.

(*c*) Unless permitted by federal law, a prescription shall not be issued for the dispensing of drugs or controlled substances as defined in section thirty-eight of chapter one hundred and twenty-three, listed in any schedule to a drug dependent person for the purpose of continuing his dependence upon such drugs, in the course of conducting an authorized clinical investigation pursuant to an addict rehabilitation program.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 15.

§ 20. Oral prescription; duties of practitioner and pharmacist; report of subsection (c) violations

(*a*) Upon receiving an oral prescription for a controlled substance from an authorized practitioner, the pharmacist shall immediately reduce the prescription to writing on a prescription form and shall record the name, address and registration number of the practitioner and the name of any expressly authorized representative, the date of the prescription, the name, dosage and strength per dosage unit of the controlled substance, the serial number assigned to the prescription by the dispensing pharmacy, the name of said pharmacy, the name and address of the patient unless it is a veterinary prescription, the directions for use and any cautionary statements required, and a statement indicating the number of times to be refilled.

(*b*) If the prescribing practitioner is not known to the pharmacist, he shall make a reasonable effort to determine that the oral authorization came from a registered practitioner.

(*c*) Whenever a practitioner dispenses a controlled substance by oral prescription, such practitioner shall, within a period of not more than seven days or such shorter period that is required by federal law cause a written prescription for the prescribed controlled substance to be delivered to the dispensing pharmacy. The prescription may be delivered to the pharmacy in person or by mail, but if delivered by mail the envelope shall be postmarked within the seven-day period or such shorter period that is required by federal law. Upon receipt, the dispensing pharmacy shall attach said prescription to the oral prescription which the pharmacy has reduced to writing. Persons charged with the enforcement of this chapter shall report violations of this subsection to the board of registration in medicine, the board of registration in dentistry, the board of registration in podiatry or the board of registration in veterinary medicine, whichever is applicable, and to the commissioner or board of registration in pharmacy, whichever is applicable.

Added by St.1971, c. 1071, § 1.

§ 21. Packaging and labeling by pharmacist filling prescription

The pharmacist filling a written or oral prescription for a controlled substance shall package the controlled substance in a container, affixing to the container a label showing the date of filling, the pharmacy name and address, the serial number of the prescription, the name of the patient, unless it is a veterinary prescription, the name of the prescribing practitioner, the name of the controlled substance, directions for use and cautionary statements, if any, contained in such prescription or required by law, and if the controlled substance is dispensed as tablets or capsules the number of same in such container.

Added by St.1971, c. 1071, § 1. Amended by St.1976, c. 110.

§ 22. Written prescription; contents; packaging and labeling by practitioner dispensing to user

(*a*) A practitioner who dispenses a controlled substance by issuing a written prescription shall state on the prescription the name, address and registration number of the practitioner, the date of delivery of the prescription, the name, dosage and strength per dosage unit of the controlled substance, the name and address of the patient unless it is a veterinary prescription, the directions for use and any cautionary statements required, and a statement indicating the number of times to be refilled.

(*b*) A practitioner who dispenses by delivering to an ultimate user a controlled substance which is not for immediate administration shall package the controlled substance in a container, affixing to the container a label bearing the practitioner's name and address, the date of dispensing, the name of the patient unless it is a veterinary prescription, the name, dosage and strength per dosage unit, of the controlled substance, directions for use and any necessary cautionary statements.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 16.

§ 23. Written prescription; signatures; filing and inspection; expiration; refilling; restrictions

(*a*) A written prescription for a controlled substance in Schedule II shall become invalid five days after the date of issuance.

(*b*) A written prescription for a controlled substance in Schedule II shall not be refilled and shall be kept in a separate file.

(*c*) The pharmacist filling a written prescription for a controlled substance in Schedule II shall endorse his own signature on the face thereof.

(*d*) In regard to a controlled substance in Schedule II or III, no prescription shall be filled for more than a thirty-day supply of such substance upon any single filling; provided, however, that with regard to dextro amphetamine sulphate and methyl phenidate hydrochloride, a prescription may be filled for up to a sixty-day supply of such substance upon any single filling if said substance is being used for the treatment of minimal brain dysfunction or narcolepsy.

(*e*) All prescriptions for controlled substances shall be kept for two years by the pharmacy and shall be subject to inspection pursuant to the provisions of this chapter.

(*f*) No prescription for a controlled substance shall be refilled unless the original prescription provides for such refilling and unless the number of refills has been specified in said prescription.

(*g*) A prescription shall be written in ink, indelible pencil or typewriter; and a written prescription shall be signed by the prescriber with his usual signature.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 17; St.1974, c. 264.

§ 24. Dispensing by practitioner for narcotic drug research or treatment of drug dependent persons; report to commissioner of mental health; confidential and privileged records; notice of multiple sources of drugs; failure to report; penalties; rules and regulations; acute poisoning by controlled substances

(*a*) A practitioner who dispenses a controlled substance in Schedule I, II, or III in the course of research conducted pursuant to the provisions of section eight or for the purpose of treating for his drug dependency a drug dependent person as defined in section thirty-eight of chapter one hundred and twenty-three shall report to the commissioner of mental health or his designee identifying information and the address of each research subject or patient to whom such controlled substance is dispensed, and the name, dosage and strength per dosage unit of the substance so dispensed. Said commissioner shall maintain records of each such report.

(*b*) Such records maintained by the commissioner of mental health shall be closed to the public and shall not be available to any law enforcement officer for any purpose, nor shall they be used in the criminal prosecution of such research subject or patient pursuant to any provision of this chapter, nor shall they be admissible in evidence against such research subject or patient in any criminal proceeding.

(*c*) If the commissioner of mental health determines that the research subject or patient is receiving any controlled substance from more than one source and in quantities which he determines to be harmful to the health of the research subject or patient, said commissioner shall so notify the practitioners who have dispensed the controlled substance.

(*d*) The commissioner of mental health shall report to the commissioner any failure of a practitioner to report the information required by the provisions of this section. The failure of a practitioner to report as aforesaid shall constitute sufficient grounds for the termination of the research project or study pursuant to the provisions of subsection (*c*) of section eight, or the revocation, suspension or modification of the practitioner's registration, or both.

(*e*) In order to prevent the dispensing of controlled substances to the same individual from multiple sources or the unlawful diversion of controlled substances, the commissioner of mental health shall pursuant to the provisions of chapter thirty A, after consultation with the commissioner of public health, adopt rules and regulations for carrying out the provisions of this section.

(*f*) Every physician attending or treating a case of acute poisoning caused by any controlled substance shall report the circumstances of such poisoning to the commissioner, provided, however, that such physician shall not report the identity of any person who has been so poisoned to the commissioner or to any law enforcement officer or agency for any purpose without the written consent of such person, nor shall the identity of such person be admissible in evidence against said person in any criminal proceeding. The commissioner may then require or conduct further investigation into the circumstances of such poisoning.

(*g*) This section shall not apply to a practitioner who has been authorized by the Attorney General of the United States to withhold the names and other identifying characteristics of certain persons pursuant to 21 U.S.C. § 872(c) [1].

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 18, 19; St.1973, c. 469.

[1] 21 U.S.C.A. § 872(c).

§ 25. **Restrictions**

No person—

(1) who is subject to the requirements of sections six and seven and twelve to seventeen, inclusive, shall dispense a controlled substance in violation of said section seventeen;

(2) shall distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person or manufacturer a controlled substance not authorized by his registration;

(3) who is a registrant shall distribute a controlled substance in violation of section sixteen;

(4) shall remove, alter, or obliterate a symbol or label required by federal law and the laws of the commonwealth;

(5) shall refuse or fail to make, keep, or furnish any record, report, notification, declaration, order or order form, statement, invoice, or information required under this chapter;

(6) shall refuse any entry into any premises or inspection authorized by this chapter;

(7) shall remove, break, injure, or deface a seal placed upon controlled substances pursuant to this chapter, or remove or dispose of substances so placed under seal;

(8) shall use, to his own advantage, or reveal, other than to duly authorized officers or employees of the United States or of the commonwealth or to the courts when relevant in any judicial proceeding under this chapter, any information acquired in the course of an inspection authorized by this chapter concerning any method or process which is a trade secret.

No person who is a registrant shall manufacture a controlled substance in Schedule I or II which is not expressly authorized by his registration.

Added by St.1971, c. 1071, § 1.

§ 26. Distribution in course of business in violation of section 16 or furnishing false information in application, etc. prohibited

No person who is a registrant shall knowingly or intentionally;

(1) distribute a controlled substance classified in Schedule I or II in the course of his legitimate business, except pursuant to an order or an order form as required by section sixteen; or

(2) furnish false or fraudulent material information in, or omit any material information from, any application, report, record, or other document required to be made, kept, or filed pursuant to the provisions of this chapter.

Added by St.1971, c. 1071, § 1.

§ 27. Instruments for administering controlled substances by injection; unauthorized possession, delivery or sale prohibited; purchase by prescription; records and inspection; licenses; fees

(*a*) No person, not being a physician, dentist, nurse or veterinarian registered under the laws of this commonwealth, or of the state where he resides, or a registered embalmer, manufacturer of or dealer in embalming supplies, pharmacist, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, student engaged in an activity necessary to a course prescribed by a school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming approved under the provisions of chapter one hundred and twelve, official of any government having possession of the articles hereinafter mentioned by reason of his official duties, nurse acting under the direction of a physician or dentist, employee of a hospital or other facility licensed by the department acting under the direction of its superintendent or officer in immediate charge, or a carrier or messenger engaged in the transportation of such articles, or a person who has received a written prescription issued under subsection (*c*), or a podiatrist who has received a certificate from the board of registration in podiatry stating that upon examination by said board he has been determined to be competent to use hypodermic needles or a scientific investigator registered pursuant to the provisions of section seven, or a person licensed under subsection (*e*), shall have in his possession a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of controlled substances by injection.

(*b*) No such syringe, needle or instrument shall be delivered or sold to, or exchanged with, any person except a pharmacist, dentist, physician, veterinarian, registered embalmer, manufacturer of or dealer in embalming supplies, scientific investigator registered pursuant to the provisions of section seven, wholesale druggist, manufacturing pharmacist, manufacturer of or dealer in surgical supplies, a student enrolled in a course for which such possession is necessary and prescribed at an approved school of medicine, dentistry, podiatry, veterinary medicine, nursing or embalming, an official of any government agency requiring the use of such syringe, needle or instrument by reason of his official duties, a nurse upon the written order of a physician or dentist, or a person who has received a written prescription issued under subsection (*c*), a podiatrist certified as aforesaid, or an employee of a hospital, clinic, nursing home, rest home or detoxification facility licensed by the department, or scientific institution upon the written order of its superintendent or officer in immediate charge of a person licensed under subsection (*e*).

(*c*) A physician may issue to a patient under his immediate charge a written prescription to purchase, from a pharmacist only, any of the instruments specified in subsection (*a*). Such prescription shall contain the name and address of the patient, the description of the instrument prescribed and the number of instruments prescribed. The pharmacist filling the prescription shall record upon the face of said prescription, over the signature of the pharmacist making the sale, the date of such sale. Such prescription may be renewed or refilled for one year unless the physician indicates otherwise on the prescription, and each refilling shall be noted upon the prescription. No prescription for such instruments shall be refilled after one year from date of issue. The pharmacist filling the prescription shall dispense any such instrument in a sanitary container which shall completely enclose such instrument, and shall affix to said container a label bearing (1) the name and address of the pharmacy, and if said pharmacy is in a hospital, the name and address of said hospital, (2) the name and address of the patient, (3) the file number of the prescription, and (4) the name of the physician prescribing the same. The person to whom the prescription is issued shall keep such instrument in said container at all times, except when such instrument is in actual use or is in the process of being cleaned.

(*d*) A record shall be kept by the person selling such syringes, needles or instruments, which shall give the date of the sale, the name and address of the purchaser and a description of the instrument. This record shall be open to inspection pursuant to a judicial warrant or to the provisions of section thirty.

(*e*) No person, except a manufacturer of or dealer in surgical supplies, a manufacturer of or dealer in embalming supplies, a pharmacist or wholesale druggist, which pharmacist or wholesale druggist is licensed under the provisions of chapter one hundred and twelve, shall sell, offer for sale, deliver, or have in possession with intent to sell hypodermic syringes, hypodermic needles or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department. Such license shall be valid for a period of one year. The fee for such license shall be ten dollars. A license issued to a company or corporation which has more than one branch or department shall include any and all branches and departments or sections of said company or corporation.

No person except a person listed in subsections (*b*) or (*c*) shall obtain, receive or purchase a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of controlled substances by injection, unless licensed so to do by the department, or by a local board of health. A license to obtain, receive or purchase any such instrument, which license shall be valid throughout the commonwealth, may be obtained from the department upon payment of a fee of five dollars, and a license to obtain, receive or purchase any such instrument, which license shall be valid only in a particular city or town of the commonwealth, may be obtained from the local board of health upon payment of a fee of fifty cents. Said license shall be valid for one year.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 20; St. 1973, c. 1190, §§ 15 to 17.

§ 28. Violations of this chapter; injunction; jurisdiction

Upon petition of the board of registration in pharmacy or the commissioner in the case of a pharmacy, or upon petition of the commissioner in any case, the superior court shall have jurisdiction to restrain or enjoin a violation of this chapter.

Added by St.1971, c. 1071, § 1.

§ 29. Educational programs for prevention of abuse of controlled substances; powers and duties of commissioner of mental health

(*a*) The commissioner of mental health in cooperation with the commissioner of education shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he shall:

(1) promote better recognition of the problem of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist the attorney general in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(*b*) The commissioner of mental health shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, he shall:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(*i*) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(*ii*) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and

(*iii*) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and

(3) enter into contracts with public agencies, institutions of higher education and private organizations or individuals for the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(*c*) The commissioner of mental health may enter into contracts for educational and research activities.

Added by St.1971, c. 1071, § 1.

§ 30. Administrative inspection of controlled premises; warrants; issuance; requisites and procedure; entry and inspection without warrant; inventory and seizure of property

(*a*) Administrative inspection warrants shall issue for the inspection of controlled premises in accordance with the provisions of this section. As used in this section "administrative inspection warrants" are warrants for the purpose of inspecting, copying and verifying the correctness of records, reports or other documents required to be kept by a registrant on controlled premises and for the seizure of property appropriate to such inspection. For the purposes of this section "controlled premises" means any place or area, including but not limited to any building, conveyance, warehouse, factory, or establishment, in which persons registered under the provisions of this chapter or required thereunder to keep records, are permitted to hold, manufacture, compound, process, distribute, deliver, dispense, or administer any controlled substance or in which such persons make or maintain records pertaining thereto.

(*b*) A district court or justice or superior court justice may, upon proper oath or affirmation by the commissioner or his designee except in the case of a pharmacy, by the commissioner or his designee or by the designee of the board of registration in pharmacy, or by a police officer showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property if appropriate to the inspections. For the purposes of the issuance of administrative inspection warrants, probable cause exists upon a showing of a reasonable and valid public interest in the effective enforcement of this chapter or rules or regulations hereunder under a general plan sufficient to justify administrative inspection of an area, premises, buildings or conveyances in the circumstances specified in the application or such warrant.

(*c*) An administrative inspection warrant shall issue only upon affidavit sworn to before the court, or justice establishing the grounds for issuing the warrant. If the court or justice is satisfied that grounds for the issuance of such warrant exists or that there is probable cause to believe they exist, he shall issue such warrant identifying the area, premises, buildings or conveyances to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. Such warrant shall:

(1) be directed to the commissioner or his designee, except in the case of a pharmacy to the commissioner or to the designee of the board of registration in pharmacy, or to a police officer;

(2) command the person to whom it is directed to inspect the area, premises, buildings or conveyances identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(3) describe the item or types of property to be inspected or seized, if any;

(4) direct that it be served during normal business hours.

(*d*) An administrative inspection warrant issued and executed pursuant to the provisions of this section shall be returned to the issuing court, except if said warrant is issued by the superior court it shall be returned to any court named in such warrant, within ten days of the date of issuance thereof unless, upon a showing of a need for additional time, the court or justice orders otherwise. If property is seized pursuant to such warrant, a copy of the inventory shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The inventory shall be made in the presence of the person executing such warrant and of the person from whose possession or premises the property was taken, if present. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for such warrant at the time it is returned to a court.

(*e*) When authorized by an administrative inspection warrant issued pursuant to this section a person designated by the commissioner, except in the case of a pharmacy by the commissioner or by the board of registration in pharmacy, upon showing such warrant to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(*f*) A person executing an administrative inspection warrant may:

(1) use reasonable force and means to execute the warrant;

(2) inspect and copy records required by this chapter to be kept;

(3) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and except as provided in subsection (*h*), all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(4) inventory any stock of any controlled substance therein and obtain samples thereof.

(*g*) This section shall not prevent entries and administrative inspections, including seizures of property, without a warrant:

(1) if the owner, operator, or agent in charge of the controlled premises consents;

(2) in situations presenting imminent danger to health or safety;

(3) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(4) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or

(5) in all other situations in which a warrant is not required by the laws and constitution of the commonwealth or of the United States.

(*h*) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 21.

§ 31. Classes of controlled substances; establishment of criminal penalties for violations of this chapter

For the purposes of establishing criminal penalties for violation of a provision of this chapter, there are established the following five classes of controlled substances:

CLASS A

(*a*) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(1) Acetylmethadol
(2) Allylprodine
(3) Alphacetylmethadol
(4) Alphameprodine
(5) Alphamethadol
(6) Benzethidine
(7) Betacetylmethadol
(8) Betameprodine
(9) Betamethadol
(10) Betaprodine
(11) Clonitazene

(12) Dextromoramide
(13) Dextrorphan
(14) Diampromide
(15) Diethylthiambutene
(16) Dimenoxadol
(17) Dimepheptanol
(18) Dimethylthiambutene
(19) Dioxaphetylbutyrate
(20) Dipipanone
(21) Ethylmethylthiambutene
(22) Etonitazene
(23) Etoxeridine
(24) Furethidine
(25) Hydroxypethidine
(26) Ketobemidone
(27) Levomoramide
(28) Levophenacylmorphan
(29) Morpheridine
(30) Noracymethadol
(31) Norlevorphanol
(32) Normethadone
(33) Norpipanone
(34) Phenadoxone
(35) Phenampromide
(36) Phenomorphan
(37) Phenoperidine
(38) Piritramide
(39) Proheptazine
(40) Properidine
(41) Racemoramide
(42) Trimeperidine

(*b*) Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Acetorphine
(2) Acetyldihydrocodeine
(3) Benzylmorphine
(4) Codeine methylbromide
(5) Codeine-N-Oxide
(6) Cyprenorphine
(7) Desomorphine
(8) Dihydromorphine
(9) Etorphine
(10) Heroin
(11) Hydromorphinol
(12) Methyldesorphine

(13) Methylhydromorphine
(14) Morphine methylbromide
(15) Morphine methylsulfonate
(16) Morphine-N-Oxide
(17) Myrophine
(18) Nicocodeine
(19) Nicomorphine
(20) Normorphine
(21) Pholcodine
(22) Thebacon

CLASS B

(*a*) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1) except that these substances shall not include the isequinoline alkaloids of opium

(3) Opium poppy and poppy straw

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(*b*) Unless specifically excepted or unless listed in another schedule, any of the following opiates, including isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Alphaprodine
(2) Anileridine
(3) Bezitramide
(4) Dihydrocodeine
(5) Diphenoxylate

(6) Fentanyl
(7) Isomethadone
(8) Levomethorphan
(9) Levorphanol
(10) Metazocine
(11) Methadone
(12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane
(13) Moramide-Intermediate, 2-methyl-3-morpholine-1, 1-diphenylpropane carboxylic acid
(14) Pethidine
(15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine
(16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate
(17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid
(18) Phenazocine
(19) Piminodine
(20) Racemethorphan
(21) Racemorphan

(*c*) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers

(2) Any substance which contains any quantity of methamphetamine, including its salts, isomers and salts of isomers

(3) Phenmetrazine and its salts.

(4) Methylphenidate.

(*d*) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid

(2) Any substance which contains any quantity of methaqualone, or any salt or derivative of methaqualone.

CLASS C

(*a*) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Chorhexadol
(2) Glutethimide
(3) Lysergic acid
(4) Lysergic acid amide
(5) Methyprylon
(6) Phencyclidine
(7) Sulfondiethylmethane
(8) Sulfonethylmethane
(9) Sulfonmethane

(*b*) Nalorphine

(*c*) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

[(*d*) Blank.]

(*e*) Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) 3, 4-methylenedioxy amphetamine
(2) 5-methoxy-3,4-methylenedioxy amphetamine
(3) 3,4,5-trimethoxy amphetamine
(4) Bufotenine
(5) Diethyltryptamine
(6) Dimethyltryptamine
(7) 4-methyl-2,5-dimethoxyamphetamine
(8) Ibogaine
(9) Lysergic acid diethylamide
(10) Mescaline
(11) Peyote
(12) N-ethyl-3-piperidyl benzilate
(13) N-methyl-3-piperidyl benzilate
(14) Psilocybin
(15) Psilocyn
(16) Tetrahydrocannabinols
(17) 4-Bromo-2,5-dimethoxy-amphetamine.

CLASS D

(*a*)

(1) Barbital
(2) Chloral betaine
(3) Chloral hydrate
(4) Ethchlorvynol
(5) Ethinamate
(6) Methohexital
(7) Meprobamate
(8) Methylphenobarbital
(9) Paraldehyde
(10) Petrichloral
(11) Phenobarbital

(*b*) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances, or which contains any of their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Marihuana

(2) Butyl Nitrite

(3) Isobutyl Nitrite

(4) 1-Nitrosoxy-Methyl-Propane.

CLASS E

(*a*) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(*b*) Prescription drugs other than those included in Classes A, B, C, D, and subsection (*a*) of this Class.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 22; St.1973, c. 459, § 1; St.1977, c. 824; St.1979, c. 379.

§ 32. Unlawful manufacture, distribution, dispensing or possession of controlled or counterfeit substances in classes A to E of section 31; criminal penalties

Except as authorized by this chapter, no person shall knowingly or intentionally manufacture, distribute, dispense, or possess with intent to manufacture, distribute or dispense a controlled substance; or create, distribute, dispense or possess with intent to distribute or dispense a counterfeit substance.

Whoever violates any provision of this section relative to a controlled substance in Class A or B of section thirty-one shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one half years or by a fine of not more than twenty thousand dollars, or both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a felony under any provision of this chapter, or under a corresponding provision of prior law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in the state prison for not less than five years and not more than fifteen years and by a fine of not more than thirty thousand dollars; except that if a person has a prior conviction of any offense involving the manufacture, distribution, or dispensing of heroin or the possession with intent to manufacture, distribute or dispense heroin, such person shall be punished by imprisonment in the state prison for not less than ten years nor more than twenty-five years and by a fine of not more than thirty thousand dollars.

Whoever violates any provision of this section relative to a controlled substance in Class C of section thirty-one shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one half years, or by a fine of not more than ten thousand dollars, or by both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a felony under any provision of this chapter, or under a corresponding provision of prior law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in the state prison for not less than three years nor more than ten years and by a fine of not more than twenty thousand dollars.

Whoever violates any provision of this section relative to controlled substances in Class D of section thirty-one, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than five thousand dollars, or both. Whoever violates any provision of this paragraph after one or more prior convictions of an offense under any provision of this section, or of a felony under any provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law shall be punished by imprisonment in the state prison for not less than two years nor more than five years and by a fine of not more than ten thousand dollars.

Whoever violates any provision of this section relative to Schedule E of section thirty-one, shall be punished by imprisonment for not more than one year or by a fine of not more than twenty-five hundred dollars, or both. Whoever violates any provision of this paragraph after one or more prior convictions of an offense under any provision of this section, or of a felony under any provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law, shall be punished by imprisonment for not less than one year nor more than two years and by a fine of not more than five thousand dollars.

Added by St.1971, c. 1071, § 1.

§ 33. Unlawful use of registration numbers in manufacture or distribution, or fraudulently obtaining possession, of controlled substances; criminal penalties

(*a*) No person shall knowingly or intentionally use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person.

(*b*) No person shall utter a false prescription for a controlled substance, nor knowingly or intentionally acquire or obtain possession of a controlled substance by means of forgery, fraud, deception or subterfuge, including but not limited to the forgery or falsification of a prescription or the nondisclosure of a material fact in order to obtain a controlled substance from a practitioner.

(*c*) Whoever violates any provision of this section shall be punished by imprisonment in the state prison for not more than four years or in a house of correction for not more than two and one half years or by a fine of not more than twenty thousand dollars, or by both such fine and imprisonment. Whoever violates any provision of this section after one or more prior convictions of a violation of this section, or of a felony under any other provision of this chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as defined in said earlier law shall be punished by imprisonment in the state prison for not more than eight years or in a jail or house of correction for not more than two and one half years, or by a fine of not more than thirty thousand dollars or by both such fine and imprisonment.

Added by St.1971, c. 1071, § 1. Amended by St.1974, c. 102.

§ 34. Unlawful possession; particular controlled substances, including heroin and marihuana; prior convictions; criminal penalties; continuance; probation; dismissal; sealing of records

No person knowingly or intentionally shall possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the provisions of this chapter. Except as hereinafter provided, any person who violates this section shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment. Any person who violates this section by possessing heroin shall for the first offense be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both, and for a second or subsequent offense shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years or by a fine of not more than five thousand dollars and imprisonment in a jail or house of correction for not more than two and one-half years. Any person who violates this section by possession of marihuana or a controlled substance in Class E of section thirty-one shall be punished by imprisonment in a house of correction for not more than six months or a fine of five hundred dollars, or both. Except for an offense involving a controlled substance in Class E of section thirty-one, whoever violates the provisions of this section after one or more convictions of a violation of this section or of a felony under any other provisions of this chapter, or of a corresponding provision of earlier law relating to the sale or manufacture of a narcotic drug as defined in said earlier law, shall be punished by imprisonment in a house of correction for not more than two years or by a fine of not more than two thousand dollars, or both.

In any person who is charged with a violation of this section has not previously been convicted of a violation of any provision of this chapter or other provision of prior law relative to narcotic drugs or harmful drugs as defined in said prior law, or of a felony under the laws of any state or of the United States relating to such drugs, has had his case continued without a finding to a certain date, or has been convicted and placed on probation, and if, during the period of said continuance or of said probation, such person does not violate any of the conditions of said continuance or said probation, then upon the expiration of such period the court may dismiss the proceedings against him, and may order sealed all official records relating to his arrest, indictment, conviction, probation, continuance or discharge pursuant to this section; provided, however, that departmental records which are not public records, maintained by police and other law enforcement agencies, shall not be sealed; and provided further, that such a record shall be maintained in a separate file by the department of probation solely for the purpose of use by the courts in determining whether or not in subsequent proceedings such person qualifies under this section. The record maintained by the department of probation shall contain only identifying information concerning the person and a statement that he has had his record sealed pursuant to the provisions of this section. Any conviction, the record of which has been sealed under this section, shall not be deemed a conviction for purposes of any disqualification or for any other purpose. No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, indictment, conviction, dismissal, continuance, sealing, or any other related proceeding, in response to any inquiry made of him for any purpose.

Notwithstanding any other penalty provision of this section, any person who is convicted for the first time under this section for the possession of marihuana or a controlled substance in Class E and who has not previously been convicted of any offense pursuant to the provisions of this chapter, or any provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be placed on probation unless such person does not consent thereto, or unless the court files a written memorandum stating the reasons for not so doing. Upon successful completion of said probation, the case shall be dismissed and records shall be sealed.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 23, 24; St.1974, c. 207; St.1974, c. 440; St.1975, c. 369.

§ 35. Unlawful presence at a place where heroin is kept or being in company of person in possession thereof; criminal penalties; application of section 34 to probation and repeated violations

Any person who is knowingly present at a place where heroin is kept or deposited in violation of the provisions of this chapter, or any person who is in the company of a person, knowing that said person is in possession of heroin in violation of the provisions of this chapter, shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both; provided, however, that the provisions of the third paragraph of section thirty-four relative to probation sealing of the records and repeated violations shall apply to him.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 25.

§ 36. Protective custody of children found present where controlled substances are kept or possessed in violation of this chapter

Notwithstanding the provisions of section thirty-five, if a police officer finds a child present where said officer finds a substance which he reasonably believes to be a controlled substance listed in Class A, B, or C of section thirty-one kept or possessed in violation of any provision of this chapter, and if the police officer reasonably believes that the child has not reached his seventeenth birthday and that the child knew of the presence of such controlled substance, the police officer may lawfully take such child into protective custody for a period not to exceed four hours. Persons having custody of a child under this section shall make reasonable efforts to notify the child's parent or guardian or other person having lawful custody. Such persons shall be considered to be acting in the conduct of their official duties and shall not be held criminally or civilly liable for such acts. A child detained pursuant to the provisions of this section shall not be considered to have been arrested or to have a criminal record for any purpose; however, only a departmental record of custody shall be made by the officer indicating the circumstances of custody. The procedures and processes provided by this section for the care, protection, and custody of children are not exclusive but are in addition to all others provided by law.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 26.

§ 37. Stealing of controlled substances from persons authorized to dispense or possess; criminal penalties

Whoever steals a controlled substance from a registered manufacturer, wholesale druggist, pharmacy or other person authorized to dispense or possess any controlled substance shall be punished by imprisonment in the state prison for not more than ten years or in a jail or house of correction for not more than two and one-half years or by a fine of not more than five hundred dollars.

Added by St.1971, c. 1071, § 1.

§ 38. Violation of sections 24(a), 25, 26 or 27; prior convictions; criminal penalties

Any person who knowingly violates any provision of subsection (*a*) of section twenty-four, or of section twenty-five, twenty-six or twenty-seven shall be punished by imprisonment for not more than one year or by a fine of not more than one thousand dollars, or both. Whoever violates any of the provisions of any of said sections after one or more prior convictions of a violation of any provision of this chapter or of a provision of prior law relating to the sale or manufacture of narcotic drugs or harmful drugs as defined in said prior law shall be punished by imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 27.

§ 39. Violation of sections 21 or 22; prior convictions; criminal penalties

Any person who knowingly violates any provision of sections twenty-one or twenty-two shall be punished by imprisonment for not more than six months or by a fine of not more than fifteen hundred dollars, or by both. Whoever violates any of the provisions of said sections after one or more prior convictions of a violation of any provision of this chapter, or of a provision of prior law relating to narcotic drugs or harmful drugs as defined in said prior law shall be punished by imprisonment for not more than two years or by a fine of not more than two thousand dollars, or both.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 28.

§ 40. Conspiracy to violate this chapter; punishment

Whoever conspires with another person to violate any provision of this chapter shall be punished by imprisonment or fine, or both, which punishment shall not exceed the maximum punishment described for the offense, the commission of which was the object of the conspiracy.

Added by St.1971, c. 1071, § 1.

§ 41. Arrest without warrant

A police officer shall have the authority to arrest without a warrant:

(*a*) any person committing in his presence any offense set forth in this chapter;

(*b*) any person who he has probable cause to believe has committed or is committing a felony set forth under the provisions of this chapter; or

(*c*) any person who he has probable cause to believe has committed or is commiting a violation of the provisions of sections twenty-seven, thirty-two, thirty-three, thirty-four, thirty-five, thirty-seven and forty.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, § 29.

§ 42. Cooperation with federal and other state agencies

The commissioner and the attorney general shall cooperate with federal and other state agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end they may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;

(2) Coordinate and cooperate in training programs concerning the enforcement of laws governing controlled substances at local and state levels;

(3) Cooperate with the bureau by establishing a centralized unit to accept, catalog, file and collect statistics including statistics regarding drug dependent persons and controlled substance law offenders within the commonwealth and make the information available for federal, state and local law enforcement purposes, provided that they shall not furnish the name or identity of a patient or research subject; and

(4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted.

Added by St.1971, c. 1071, § 1.

§ 43. Conformity with federal acts

Notwithstanding any other provisions of this chapter, no practitioner shall dispense, distribute, administer, or possess any controlled substance except in conformity with the provisions of the Federal "Comprehensive Drug Abuse Prevention and Control Act of 1970" [1] or any amendment thereof and the Federal Food, Drug and Cosmetic Act [2].

Added by St.1971, c. 1071, § 1.

[1] 21 U.S.C.A. § 801 et seq.

[2] 21 U.S.C.A. § 301 et seq.

§ 44. Violations of section 34; acquittal, dismissal or indictment nol prossed; sealing of records

If any person is found not guilty of the violation of any provision of section thirty-four or if a complaint against him is dismissed or an indictment nol prossed for a violation of said section, the court shall order all official records relating to his arrest, indictment, conviction, continuance or discharge to be sealed; provided, however, that departmental records maintained by police and other law enforcement agencies which are not public records shall not be sealed.

No person as to whom such sealing has been ordered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise making a false statement by reason of his failure to recite or acknowledge such arrest, indictment, disposition, sealing or any other related court proceeding, in response to any inquiry made of him for any purpose.

Added by St.1971, c. 1071, § 1. Amended by St.1973, c. 533, § 1.

§ 45. Photographing and fingerprinting of persons charged with felony violation of this chapter authorized

Any person arrested for or charged with the criminal violation of any provision of this chapter which constitutes a felony may at the time of arrest or as soon thereafter as is practicable be photographed and fingerprinted according to the system of the state bureau of identification, and upon conviction any such fingerprints and photographs shall be made a part of permanent records of the police department of the municipality where the arrest took place, and without delay two copies of the fingerprints and photographs shall be forwarded, with such other description as may be required and a written history of the offense, to the state bureau of identification.

Added by St.1971, c. 1071, § 1.

§ 46. Repealed by St.1978, c. 508, § 1

§ 47. Forfeiture of property; exceptions; jurisdiction; procedure; disposition; records and inspection; seizure of property; species of plants; summary forfeiture

(*a*) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.

(2) All materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in violation of this chapter.

(3) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, conceal, or otherwise to facilitate the manufacture, dispensing, or distribution of, or possession with intent to manufacture, dispense, or distribute, a controlled substance in violation of the provisions of section thirty-two.

(4) All books, records, and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this chapter.

(5) All moneys used, or intended for use, in the procurement, manufacture, compounding, processing, delivery, or distribution of any controlled substance in violation of this chapter; all moneys which are the proceeds of any sale of any controlled substance in violation of this chapter.

(*b*) Property subject to forfeiture under subparagraphs (1), (2), (4), and (5) of subsection (*a*) shall be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (*a*) of this section shall be destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(*c*) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) of subsection (*a*) of this section, except as follows:

(1) No conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited unless it shall appear that the owner or other person in charge of such conveyance was a consenting party of privy to a violation of this chapter.

(2) No conveyance shall be forfeited by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or of the commonwealth, or of any state.

(3) No conveyance shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances. Proof that the conveyance was used to facilitate the unlawful dispensing, manufacturing, or distribution of, or possession with intent unlawfully to manufacture, dispense or distribute, controlled substances on three or more different dates shall be prima facie evidence that the conveyance was used in and for the business of unlawfully manufacturing, dispensing, or distributing controlled substances.

(4) No conveyance used to facilitate the unlawful manufacturing, dispensing, or distribution of, or the possession with intent unlawfully to manufacture, dispense, or distribute marihuana or a substance, not itself a controlled substance, containing any marihuana shall be forfeited if the net weight of the substance so manufactured, dispensed, or distributed or possessed with intent to manufacture, dispense or distribute, is less than ten pounds in the aggregate.

(*d*) A district attorney or the attorney general may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance or moneys subject to forfeiture under the provisions of subparagraphs (3) and (5) of subsection (*a*). Such petition shall be filed in the court having jurisdiction over said conveyance or said moneys or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Such proceeding shall be deemed a civil suit in equity, in which the commonwealth shall have the burden of proving all material facts by a preponderance of the evidence, and the owner of said conveyance or other person claiming thereunder shall have the burden as to all exceptions set forth in subsection (*c*). The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance or said moneys and to such other person as appears to have an interest therein, and shall promptly, but not less than two weeks after notice, hold a hearing on the petition. At such hearing the court shall hear evidence and make findings of fact and enter conclusions of law, and shall thereupon issue a final order, from which the parties shall have such right of appeal as from a decree in equity. Such final order shall provide for disposition of said conveyance or said moneys by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other public agency, or sale at public auction or by competitive bidding. The proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance, if any, shall be deposited in the treasury of the commonwealth.

(*e*) Any officer, department, or agency having custody of any property subject to forfeiture under this chapter or having disposed of said property shall keep and maintain full and complete records showing from whom it received said property, under what authority it held or received or disposed of said property, to whom it delivered said property, the date and manner of destruction or disposition of said property, and the exact kinds, quantities and forms of said property. Said records shall be open to inspection by all federal and state officers charged with enforcement of federal and state drug control laws. Persons making final disposition or destruction of said property under court order shall report, under oath, to the court the exact circumstances of said disposition or destruction.

(*f*) During the pendency of the proceedings the court may issue at the request of the commonwealth *ex parte* any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of said property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred and seventy-six, so far as applicable.

(*g*) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.

(*h*) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.

Added by St.1971, c. 1071, § 1. Amended by St.1972, c. 806, §§ 30, 31; St. 1977, c. 556, §§ 1 to 3.

§ 47A. Seized controlled substances and narcotic drugs; custodian; destruction or disposal upon completion of trial

The police commissioner, chief superintendent or other officer or board at the head of each police department in the commonwealth shall appoint a police officer to act as custodian of all controlled substances and narcotic drugs seized in the course of any arrest or investigation. Such custodian shall be designated as the "evidence officer".

Amended by St.1972, c. 806, § 30.

§ 48. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are severable.

Added by St.1971, c. 1071, § 1.

CHAPTER 101

TRANSIENT VENDORS, HAWKERS AND PEDDLERS

HAWKERS AND PEDDLERS

Sec.
13. Definitions.
15. Application of chapter.
17. Sale of certain articles without license.
22. License; certificate of police chief; fees; special state licenses; rules and regulations.
22A. License for sale of prepared food; requisites.
24. Special licenses to veterans and blind persons; authority to sell on public streets.

HAWKERS AND PEDDLERS

§ 13. Definitions

Except as hereinafter expressly provided, the terms "hawker" and "pedler" as used in this chapter shall mean and include any person, either principal or agent, who goes from town to town or from place to place in the same town selling or bartering, or carrying for sale or barter or exposing therefor, any goods, wares or merchandise, either on foot, on or from any animal or vehicle.

§ 15. Application of chapter

The provisions of this chapter relating to hawkers and pedlers shall not apply to wholesalers or jobbers selling to dealers only, nor to commercial agents or other persons selling by sample, lists, catalogues or otherwise for future delivery, nor to any dealer regularly engaged in supplying customers with fuel oil for heating or cooking purposes from a fixed place of business within the commonwealth and who does not customarily solicit direct sales from house to house or by means of outcry, sign or signal, nor to any person who peddles only fish obtained by his own labor or that of his family, fruits, vegetables or other farm products raised or produced by himself or his family, nor to persons selling articles for charitable purposes under section thirty-three, nor to persons licensed under section forty of chapter ninety-four with respect to the sale by them of eggs, or milk, skimmed milk, cream, butter, cheese or other milk products, except frozen desserts as defined in section sixty-five G of said chapter ninety-four.

Amended by St.1937, c. 214; St.1937, c. 333; St.1955, c. 757, § 11.

§ 17. Sale of certain articles without license

Hawkers and pedlers may sell without a license newspapers, religious publications, ice, flowering plants, and such flowers, fruits, nuts and berries as are wild or uncultivated. The aldermen or selectmen may by regulations, not inconsistent with this chapter, regulate the sale or barter, and the carrying for sale or barter or exposing therefor, by hawkers and pedlers, of said articles without the payment of any fee; may in like manner require hawkers and pedlers of meats, butter, cheese, fish, and fresh fruit or vegetables, whether adults or minors, to be licensed except as otherwise provided, and may make regulations governing the same, provided that the license fee does not exceed that prescribed by section twenty-two for a license embracing the same territorial limits; and may in like manner affix penalties for violations of such regulations not to exceed the sum of twenty dollars for each such violation. A hawker and pedler of meats, butter, cheese, fish, or fresh fruit and vegetables licensed under this section need not be licensed under section twenty-two.

§ 22. License; certificate of police chief; fees; special state licenses; rules and regulations

The director may grant a license to go about carrying for sale or barter, exposing therefor and selling or bartering any goods, wares or merchandise, the sale of which is not prohibited by section sixteen, to any person who is, or has declared his intention to become, a citizen of the United States and who files with the director a completely executed application to be furnished by the director and on which shall be a certificate which shall be signed by the chief of police of the city or town in which the applicant resides and which shall state that to the best of his knowledge and belief the applicant therein named is of good repute as to morals and integrity. The director shall cause to be inserted in every such license the amount of the license fee and the name of the town for which it is issued. The licensee may go about carrying for sale or barter, exposing therefor and selling or bartering in any town mentioned in his license any meats, butter, cheese, fish, fruits, vegetables or other goods, wares or merchandise, not prohibited in section sixteen, upon payment to the director of the following fees: for each town containing not more than one thousand inhabitants, according to the then latest census, state or national, four dollars; for each town containing more than one thousand and not more than two thousand inhabitants, seven dollars; for each town containing more than two thousand and not more than three thousand inhabitants, nine dollars; for each town containing more than three thousand and not more than four thousand inhabitants, eleven dollars; and for each city and each other town, eleven dollars, and one dollar for every one thousand inhabitants thereof over four thousand; but the fee shall in no case exceed twenty-six dollars, and the amount paid shall be certified on the face of the license. The director shall retain one dollar for every city and town named in each of the above described licenses, and shall pay over to the treasurers of the respective cities and towns at least semi-annually the balance of said fees so received. The director may grant, as aforesaid, special state licenses upon payment by the applicant of fifty dollars for each license; and the licensee may go about carrying for sale or barter, exposing therefor and selling or bartering in any city or town in the commonwealth any meats, butter, cheese, fish, fruits, vegetables, or other goods, wares or merchandise, the sale of which is not prohibited by statute. A hawker or pedler licensed under this section need not be licensed under section seventeen within the territorial limits for which the license under this section is issued. A hawker or pedler licensed under this section shall be subject to such local rules and regulations as may be made in a city by the mayor and city council and in a town by the selectmen.

Amended by St.1948, c. 493, § 2; St.1961, c. 293, § 1; St.1967, c. 274.

§ 22A. License for sale of prepared food; requisites

No license shall be issued pursuant to section twenty-two to a person for the business of selling or exposing for sale from a mobile vending or peddling vehicle prepared food, meals or lunches intended to be consumed by the purchaser without further preparation or processing thereof by the purchaser, unless a certificate of registration as required by section three hundred and five C of chapter ninety-four has been issued for the premises or place of business at which such food, meals or lunches are prepared, handled or processed. The location of said premises or place of business and the fact that they have been so registered shall be endorsed upon the license issued under said section twenty-two.

Added by St.1962, c. 541.

§ 24. Special licenses to veterans and blind persons; authority to sell on public streets

The director may grant without fee, on proof of identity, a special state license to act as hawker or peddler, subject otherwise to this chapter, to a World War I or II or Korean or Vietnam veteran, as defined in clause Forty-third of section seven of chapter four, who has a service-connected disability as recognized by the United States government; and to any blind person resident in the commonwealth and approved by the commissioner of the blind; provided, that no license under this section shall authorize the holder thereof to act as hawker or peddler on any public street or sidewalk in any city or town unless and until he shall have received written authority so to do from the chief of police or other official having charge of the police therein.

Amended by St.1936, c. 74; St.1945, c. 493, § 1; St.1948, c. 493, § 4; St. 1951, c. 395; St.1954, c. 627, § 22; St.1955, c. 214; St.1961, c. 293, § 3; St.1966, c. 535, § 7; St.1967, c. 478.

CHAPTER 110

LABELS, TRADE MARKS, NAMES AND REGISTRATION THEREOF

REGISTERED BOTTLES

Sec.
17. Registration of bottles; description of name on bottles; fees; publication.
18. Unlawful use of registered bottles; application of section.
19. Prima facie evidence of unlawful use.
20. Search warrant.

REGISTRATION OF MILK CANS AND ICE CREAM CANS, TUBS AND CABINETS

21. Registration of milk cans; description of name; fees; publication.
22. Use of registered cans without consent of owner.
23. Destruction or mutilation of registered cans.
24. Defiling registered cans.
25. Search warrant.

REGISTRATION OF CERTAIN TOWELS, GARMENTS, APRONS, AND LINENS

25A. Registration of rented towels, etc.
25B. Unauthorized use or disposition of registered towels, etc.
25C. Unauthorized destruction or mutilation of registered towels, etc.

PENALTIES

28. Illegal use of registered cans; mutilation.
29. Penalty for violation of sections 25A to 25C.

REGISTERED BOTTLES

§ 17. Registration of bottles; description of name on bottles; fees; publication

A person engaged in manufacturing, bottling or selling beverages in vessels, with his name and the word "registered" branded, engraved, blown or otherwise produced thereon, or on boxes used by him, may have such vessels registered by filing in the office of the clerk of the city or town where his principal place of business is situated and in the office of the state secretary a description of the name so used by him and paying the fee provided by clause (63) of section thirty-four of chapter two hundred and sixty-two, and shall publish such description once in each of four successive weeks in a newspaper published in the city or town where the description has been filed.

Amended by St.1948, c. 550, § 16.

§ 18. Unlawful use of registered bottles; application of section

No person, without the written consent of the registered owner thereof, shall fill with a beverage with intent to sell the same any vessel registered under the preceding section, or change in any way, or conceal any name or the word "registered" thereon, or buy, sell, traffic in or dispose of any such vessel. This section shall not apply to vessels purchased from the registered owner; provided, that making a money charge or requiring the deposit of a sum of money under an agreement to refund the same upon the redelivery of the vessel shall not constitute a purchase thereof, within the meaning of this section. Violation of any provision of this section shall for the first offence be punished by a fine of not less than fifty cents for each vessel in respect to which the violation occurs or by imprisonment for not less than ten days nor more than one year, or both, and for each subsequent offence by a fine of not less than one nor more than five dollars for each such vessel or by imprisonment for not less than twenty days nor more than one year.

§ 19. Prima facie evidence of unlawful use

The purchase, sale, traffic in, disposal or use of any such registered vessel by a person engaged in the manufacture, bottling or sale of beverages, without the written consent of the owner thereof, shall be prima facie evidence of a violation of the preceding section. Possession of any such registered vessel by a junk dealer or dealer in second hand articles, without the written consent of the owner, shall be prima facie evidence of such violation. This section shall not apply to vessels purchased from the owner.

§ 20. Search warrant

Upon complaint of a person who has complied with section seventeen, or his agent, to a district court, that he has reason to believe and does believe that any of his registered vessels are being unlawfully used or filled by a person engaged in manufacturing, bottling or selling beverages, or that a junk dealer or dealer in second hand articles or a vendor of cans or bottles has such vessels in his possession or secreted in any place, said court may thereupon issue a search warrant; and may also cause the person in whose possession such vessels are found to be brought before him, and shall thereupon inquire into the circumstances of such possession; and shall award to the owner thereof possession of the property taken upon such search warrant.

Amended by St.1953, c. 319, § 13.

REGISTRATION OF MILK CANS AND ICE CREAM CANS, TUBS AND CABINETS

§ 21. Registration of milk cans; description of name; fees; publication

A person engaged in buying, selling or dealing in milk or cream in cans, or who uses cans, tubs or cabinets in the sale, transportation or storage of frozen desserts and/or frozen dessert mix, with his name and the word "registered" produced in a permanent manner in or upon such cans, tubs or cabinets, may register such articles by filing in the office of the clerk of the city or town where his principal place of business is situated, and also in the office of the state secretary, a description of the name so used by him, and paying the fee provided by clause (64) of section thirty-four of chapter two hundred and sixty-two, and shall publish such description once in each of four successive weeks in a newspaper published in the city or town where the description has been filed.

Amended by St.1934, c. 373, § 5; St.1948, c. 550, § 17; St.1957, c. 356, § 15.

§ 22. Use of registered cans without consent of owner

No person shall without the consent of the owner take, detain, use, buy, sell, traffic in or otherwise dispose of any registered can, tub or cabinet. Possession of any such registered can, tub or cabinet by a person in the transaction of his business shall be prima facie evidence of violation of this section.

§ 23. Destruction or mutilation of registered cans

No person shall without the consent of an owner wilfully destroy, mutilate or deface any registered can, tub or cabinet bearing such owner's name, or wilfully erase, mar, cover or change any word or name branded, engraved, blown or otherwise produced in a permanent manner in or upon such can, tub or cabinet.

§ 24. Defiling registered cans

Whoever puts an unclean or foul substance into any registered can, tub or cabinet shall for the first offence be punished by a fine of not less than fifty cents nor more than five dollars for each can, tub or cabinet with respect to which the violation occurs and for any subsequent offence by a fine of not less than two nor more than twenty dollars for each such can, tub or cabinet.

§ 25. Search warrant

Upon complaint of a person who has complied with section twenty-one, or his agent, to a district court that he has reason to believe and does believe that a person has wrongfully in his possession or is secreting any of his registered cans, tubs or cabinets, said court may issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person or his agent or employee in whose possession such cans, tubs or cabinets are found, and shall thereupon inquire into the circumstances of such possession; and, if said court finds that such person has been guilty of a wilful violation of any of the provisions of the three preceding sections, he shall impose the penalty prescribed therefor and shall also order the property taken upon such search warrant to be delivered to the owner.

Amended by St.1953, c. 319, § 14.

REGISTRATION OF CERTAIN TOWELS, GARMENTS, APRONS, AND LINENS

§ 25A. Registration of rented towels, etc.

A person engaged in the business of supplying or furnishing for hire or compensation on a rental or lease basis clean laundered garments, towels, aprons, bed linen or table linen who uses his name and the word "registered" on such articles or supplies may register such articles or supplies by filing in the office of the clerk of the city or town where his principal place of business is situated, and also in the office of the state secretary, a description of the name so used by him, and paying the fee provided by clause (64) of section thirty-four of chapter two hundred and sixty-two, and shall publish such description once in each of three successive weeks in a newspaper having a circulation in the city or town where the description has been filed.

Added by St.1958, c. 389, § 1.

§ 25B. Unauthorized use or disposition of registered towels, etc.

No person shall without the written consent of the owner take, detain, use, sell, traffic in or otherwise dispose of, or use for any purpose other than that for which such article was intended, any registered towel, garment, apron, bed linen or table linen; provided, however, that the use of such article or articles at the place where the same are placed or delivered by the owner or owners under an agreement, lease or license from such owner, shall not be unlawful; and provided, further, that nothing herein contained shall make it unlawful for any hotel, restaurant, cafe or other public hostelry to permit and allow the use of such towel, garment, apron, bed linen or table linen to any guest, boarder or regularly hired employee thereof, during the period of any lease, renting or hiring agreement of said supplies with the owner thereof.

Added by St.1958, c. 389, § 1.

§ 25C. Unauthorized destruction or mutilation of registered towels, etc.

No person shall without the written consent of the owner wilfully destroy, mutilate or deface any registered towel, garment, apron, bed linen or table linen, or wilfully erase, mar, cover, remove or alter any word or name printed, branded, stamped or otherwise produced in a permanent manner upon such towel, garment, apron, bed linen or table linen.

Added by St.1958, c. 389, § 1.

PENALTIES

§ 28. Illegal use of registered cans; mutilation

Violation of any provision of section twenty-two or twenty-three shall be punished for the first offence by a fine of not more than five dollars or by imprisonment for not more than two months for each can, tub or cabinet in respect to which the violation occurs and for any subsequent offence by a fine of not more than ten dollars or by imprisonment for not more than six months for each such can, tub or cabinet.

§ 29. Penalty for violation of sections 25A to 25C

Whoever violates any of the provisions of sections twenty-five A to twenty-five C, inclusive, shall be punished for the first offence by a fine of not less than ten nor more than fifty dollars, and for each subsequent offence shall be punished by a fine of not less than twenty nor more than one hundred dollars, or by imprisonment in jail for not less than thirty days nor more than three months, or both.

Added by St.1958, c. 389, § 2.

TITLE XVI

PUBLIC HEALTH

CHAPTER 111

PUBLIC HEALTH

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DEFINITIONS

§ 1. Definitions

The following words as used in this chapter, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:

"Board of health" shall include the board or officer having like powers and duties in towns where there is no board of health.

"Commissioner", the commissioner of public health.

"Council", the public health council of the department of public health.

"Department", the department of public health.

"Disease dangerous to the public health" shall include all diseases defined as such in accordance with section six.

"Farming" or "Agriculture" shall include farming in all its branches and the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural, floricultural or horticultural commodities, the raising of livestock, the keeping and raising of poultry, swine, cattle and other domesticated animals used for food purposes, bees, fur-bearing animals, and any practices, including any forestry or lumbering operations, performed by a farmer, who is hereby defined as one engaged in farming or agriculture as herein defined, or on a farm as an incident to or in conjunction with such farming operations, including preparations for market, delivery to storage, or to market or to carriers for transportation to market.

"Inland waters" shall include any and all lakes, ponds, streams, tidal waters and flats, and underground waters.

"Nuclear reactor", any apparatus, other than an atomic weapon, designed to sustain nuclear fission in a self-supporting chain reaction.

Amended by St.1938, c. 265, § 6; St.1951, c. 448, § 1; St.1966, c. 217; St.1979, c. 796, § 13.

§§ 1A, 1B. Repealed by St.1966, c. 685, § 4

DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH

§ 2. Duties of commissioner of public health

The commissioner shall administer the laws relative to health and sanitation and the regulations of the department, and shall prepare rules and regulations for the consideration of the council. The secretary of elder affairs and the commissioner shall jointly develop and submit to the council rules and regulations governing the licensure and operation of convalescent or nursing homes, rest homes, infirmaries maintained in a town and charitable homes for the aged. He may direct any executive officer or employee of the department to assist in the study, suppression or prevention of disease in any part of the commonwealth. He shall submit annually to the council a report containing recommendations in regard to health legislation.

The commissioner shall prepare from the birth, marriage and death records received by him under the provisions of chapter forty-six, and from the divorce returns received by him under the provisions of section forty-six of chapter two hundred and eight, such statistical tables as he deems useful, and shall make annual report thereof to the general court. The commissioner may make further use of such records as he deems useful for administrative and research purposes connected with health programs and population studies. He shall, as soon as is reasonably practicable, cause the birth, marriage and death records to be bound with indexes thereto and shall retain their custody. He shall prepare an alphabetical index of such divorce returns showing the names of the parties, year and number of the judgment and the county in which the divorce occurred.

Amended by St.1964, c. 508, § 2; St.1971, c. 544, § 1; St.1973, c. 1168, § 18; St.1976, c. 486, § 17.

§ 2A. Co-operation with Massachusetts rehabilitation commission

The commissioner and any executive officer or employee appointed by him shall co-operate with the Massachusetts rehabilitation

commission under the provisions of section eighty-one of chapter six for the vocational rehabilitation of any handicapped person.
Added by St.1956, c. 602, § 11.

§ 2B. Air pollution emergencies

If the commissioner of environmental quality engineering, in this section called the commissioner, determines that the condition or impending condition of the atmosphere in the commonwealth or in any part thereof constitutes a present or reasonably imminent danger to health, he may, with the approval of the governor, declare an air pollution emergency and cause the fact to be made known to the public.

The department, after public hearing held in accordance with section two of chapter thirty A, of environmental quality engineering, in this section called the department may, and with the approval of the governor, establish, and from time to time revise, an air pollution emergency plan to protect the public health during periods of such declared emergency. Said plan may include the imposition, during such periods, of controls and restrictions upon the use of certain fuels and fuel-burning installations, the practices of incineration and open burning, and the movement of specific types of motor vehicles, and said plan may include such other provisions as the department deems necessary to protect the public health during such emergency period.

During an air pollution emergency the commissioner may, with the approval of the governor, take whatever action is necessary to maintain and protect the public health, including but not limited to the implementing of the air pollution emergency plan, and prohibiting, restricting and conditioning emissions of dangerous or potentially dangerous air contaminants from whatever source derived, and requiring the evacuation of the public from, or restricting public entry into, designated areas. The commissioner shall clearly specify the geographical area to which such action shall apply.

If conditions which warrant the declaration of an air pollution emergency change or are so modified that they no longer constitute an actual or reasonably imminent danger to the public health, the commissioner shall, with the approval of the governor, declare the air pollution emergency terminated, and shall cause this fact to be made known to the public.

Any orders promulgated by the commissioner pursuant to this section, hereinafter called emergency orders, shall be enforced by personnel of the department of public health and by the state and local police. A court, judge or justice authorized to issue warrants in criminal cases may, upon complaint on oath by a person authorized to enforce emergency orders under this section that he believes that such an order is being violated in a particular property, premise or place, if satisfied that there is reasonable cause for such belief, issue a warrant identifying such property, premises or place and commanding such person to search such premises for further evidence of such violation. Information relating to trade secrets, secret processes or methods of manufacture or production shall be confidential and shall not be disclosed or received during the course of any such investigation; nor shall such information be used or disclosed in any public hearing under this section. Such enforcement personnel are further empowered to order any person having control of an air contamination source to stop and abate violation of any emergency order. Whoever knowingly fails within a reasonable time to comply with any such order to stop or abate giving due consideration to the practicability and to the physical and economic feasibility of compliance with such order shall be punished by a fine of not less than twenty dollars nor more than ten thousand dollars. For the purpose of this paragraph, each day or part thereof of violation of any such order to stop or abate, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. The superior court, on petition of any person authorized by this section to enforce emergency orders, shall have jurisdiction in equity to enforce compliance with such emergency orders.

Any aggrieved person may appeal to the commissioner or his designee for relief from the continuance of an order. If the commissioner or his designee finds that the continuance of any order in whole or in part is unreasonable or unnecessary in light of the then prevailing conditions of air pollution, he may terminate or modify any such order.

If such an appeal is disapproved by the commissioner or his designee, the aggrieved person shall, upon his request, be granted a public hearing on the question of relief from unreasonable restrictions and the continuance of such order by the commissioner. Such public hearing shall not be subject to the provisions of chapter 30A but shall be held as soon as may be by said commissioner, who shall give notice of the same. If the commissioner, upon conclusion of said hearing, determines that any such order should be terminated, or modified in any way whatever, he shall enter such further order as he deems appropriate.

All powers granted to the commissioner by this section shall be in addition to and not in limitation of any powers granted him by any other provision of law.

"Air contaminant", as used in this section, includes, but is not limited to, dust, fly ash, fume, gas, mist, odor, smoke, vapor, pollen, microorganisms, radioactive material, ionizing radiation, any combination thereof, or any decay or reaction product thereof.

Added by St.1967, c. 900. Amended by St.1974, c. 806, §§ 11, 12; St.1975, c. 706, §§ 160, 161.

§ 2C. Pollution violations; orders of department of environmental quality engineering

The commissioner of environmental quality engineering or his designee may issue orders in the name of the department of environmental quality engineering upon witnessing or being presented proof of the violation of any statute, rule, regulation or code which the said department is authorized to enforce relative to pollution. Such orders shall have the same force and effect as any rule or regulation promulgated by said department and any such order may be revoked by said department.

Added by St.1971, c. 806. Amended by St.1975, c. 706, § 162.

§ 3. Public health council; hearings, intervention

The council shall make and promulgate rules and regulations, take evidence in appeals, consider plans and appointments required by law, hold hearings, and discharge other duties required by law; but it shall have no administrative or executive functions. Hearings of the department may be held by the commissioner, or his designee or the hearings officer if so authorized by the commissioner, or by the hearings officer as provided in section seventy-one with respect to a refusal to renew or revocation of a license of a convalescent or nursing home, rest home or charitable home for the aged. The secretary of elder affairs or his designee may intervene on behalf of a resident or residents or the owner or administrator of a convalescent or nursing home, rest home, infirmary maintained in a town, or a charitable home for the aged in any proceedings before the council.

Amended by St.1946, c. 152; St.1966, c. 713, § 2; St.1973, c. 1168, § 19.

§ 3A. Board of trustees of Massachusetts hospital school; appointment

There shall be a board of trustees, to be known as the board of trustees of the Massachusetts hospital school, serving in the department and consisting of five persons. The governor, with the advice and consent of the council, shall annually appoint a member of the board, who shall serve for five years beginning on the first Monday in December in the year of his appointment and until his successor is qualified.

Added by St.1956, c. 436, § 3.

§ 4. Health districts; district health officers; enforcement of laws in districts

The commissioner, with the approval of the council, shall from time to time divide the state into not more than eight health districts. He may from time to time order two or more district health officers to work in one district, in order to study, suppress or prevent disease. Each district health officer shall act as the representative of the commissioner, and under his direction shall secure the enforcement within his district of the laws and regulations relating to public health. He shall have the powers and perform the duties set forth in this chapter, and, under the direction of the commissioner, shall perform such other duties as he may prescribe.

§§ 4A to 4D. Repealed by St.1971, c. 1076, § 3

§ 4E. Program to combat mental retardation in children

The department of public health is hereby authorized and directed to establish a program to combat mental retardation in children suffering from a genetic effect causing phenylketonuria. The said program may be conducted in conjunction with any foundation or scientific organization, hospital or medical school or with an agency of the federal government. The department may accept for such purpose any special grant of money, services or property from the federal government or any of its agencies or from any such foundation, organization or medical school.

Added by St.1962, c. 706.

§ 4F. Advisory council on radiation protection

There shall be an advisory council on radiation protection consisting of the commissioners of public health, labor and industries, public safety, and administration, the personnel administrator, the director of civil defense, and six persons to be appointed by the governor, of whom two shall hold the degree of doctor in medicine or dental medicine and shall be specialists in the field of ionizing radiation injuries, one shall have training or experience in radiology, one in radiation or health physics, one in radiation law, and one in nuclear engineering or in the industrial application of ionizing radiation. Upon the expiration of the term of office of an appointive member, his successor shall be appointed in like manner for a term of six years. One of the appointive members shall be designated chairman of the council by the governor. The members of the council shall serve without compensation and shall not be reimbursed for any expenses incurred by them in the performance of their duties.

The advisory council shall meet at least twice a year at the call of the chairman or by vote of a majority of the members of the council. It may hold public hearings but shall not have the power to summon witnesses nor to require the production of books, records and papers. It shall consider and make recommendations to the governor, the general court, and the various departments of the executive branch as to the development, growth, and status of all substances, things, and apparatus within the commonwealth capable of emitting ionizing radiation.

Added by St.1965, c. 484, § 1. Amended by St.1966, c. 420; St.1974, c. 835, § 149.

§ 4G. Epileptics; program for care, treatment and rehabilitation

The department shall establish, in one or more institutions under its control, a program for the care, treatment and medical rehabilitation of persons suffering from epilepsy and shall disseminate such information relative to the management of convulsive disorders as it considers proper. The department may accept for such purposes and for research into the causes of convulsive disorders any special grant of money, services or property from the federal government or any of its agencies or from any foundation, organization or medical school.

The department shall cooperate with the Massachusetts rehabilitation commission in developing vocational rehabilitation programs for epileptics.

Added by St.1967, c. 865, § 1.

§ 4H. Chronic renal diseases; care and treatment; agreements

The department is hereby authorized, subject to appropriation, to establish and maintain services for the treatment and care of persons suffering from chronic renal diseases within the commonwealth.

The department may enter into such agreements with community hospitals and other health, welfare and rehabilitation agencies as are necessary to carry out the purposes of this section.

The department may enter into agreements with out-of-hospital dialysis units licensed under the provisions of section fifty-one A for the care and treatment of persons suffering from renal disease; provided, that said units are licensed and operated pursuant to the rules and regulations of the department relative to out-of-hospital dialysis units; and, provided further, that any such agreement with an out-of-hospital dialysis unit be made in conjunction with a facility operated by the department which provides in-patient care and treatent for persons suffering from renal disease. Any payment made by the department or any other agency of the commonwealth to an out-of-hospital dialysis unit with which an agreement has been made in accordance with the provisions of this section shall be subject to the provisions of sections thirty K to thirty P, inclusive, of chapter seven [1] and shall in no case be in excess of any applicable rate determined by the rate setting commission or any successor agency.

Added by St.1968, c. 498. Amended by St.1973, c. 1186, § 1.

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[1] Repealed by St.1973, c. 1229, § 4. See, now, c. 6A, §§ 31 to 36.

§ 4*I*. Erythroblastosis fetalis; prevention; rules and regulations

The department is hereby authorized to establish, promote, and administer a statewide program for the prevention of erythroblastosis fetalis, and may produce and distribute as much anti-Rh gamma globulin as it deems necessary for such purpose.

The department may contract with any agency, public, private, or federal, and may adopt and promulgate such rules and regulations as are necessary to carry out the purposes of this section.

Added by St.1971, c. 539.

§ 4J. Multiple-handicapped children; financial assistance for hospital and nursing care; eligibility; payments; review; rules and regulations

Financial assistance in the payment of expenses for the hospital and nursing care of multiple-handicapped children twenty years of age or under may be paid by the department on a statewide basis, provided, that: (1) eligibility for assistance shall be determined in accordance with an income and resource schedule established by the department which takes into account the number of persons in the family and the out-of-pocket expenses for such hospital or nursing care; (2) any person applying for such assistance shall provide the department with a financial statement which discloses in full any income, assets, liabilities or other data deemed relevant by the department; (3) a medical review team under the supervision of or approved by the department, in cooperation with the department of mental health, finds that the child requires such hospital or nursing care; and (4) if such care is required as a result of injury, disease, or disability for which a third party may be liable, the department shall require the person receiving such care, his parent or legal guardian, to provide for assignment to the commonwealth of the amounts expended under this section from the proceeds of any claim against the third party. Payments made under this section shall not supersede payments or services available under any other federal, state, local or private health program or insurance plan and shall be made only to providers of care in accordance with rates established by the rate setting commission under chapter six A. The department shall review at least annually the financial need for assistance and shall terminate any payments when such need no longer exists.

The department may adopt rules and regulations to carry out the purposes of this section including, but not limited to, standards and certification requirements of providers of service and procedures for review of individuals needing care.

Added by St.1971, c. 1084, § 1. Amended by St.1973, c. 1229, § 4N.

§ 5. Powers and duties of department

The department shall take cognizance of the interests of life, health, comfort and convenience among the citizens of the commonwealth; shall conduct sanitary investigations and investigations as to the causes of disease, and especially of epidemics, and the sale of food and drugs and adulterations thereof; and shall disseminate such information relating thereto as it considers proper. It shall advise the government concerning the location and other sanitary condition of any public institution. It may produce and distribute immunological, diagnostic and therapeutic agents as it may deem advisable, and may sell such portions of such materials produced in its laboratories as constitute an excess over those required for its use within the commonwealth.

Amended by St.1941, c. 388; St.1945, c. 615; St.1957, c. 678, § 1; St. 1959, c. 522; St.1960, c. 172, § 1; St.1963, c. 390; St.1965, c. 898, § 1; St.1975, c. 706, § 163.

§ 5A. Preparation and distribution of antitoxins, serums, vaccines and products applicable to prevention and cure of diseases

Whenever the commissioner determines that the inoculation of the general public by, or the administration to the general public of, any antitoxin, serum, vaccine or other analogous product is essential in the interest of the public health and that an emergency exists by reason of a shortage of such product, the department may purchase, produce and distribute such product under such conditions and restrictions as it may prescribe; and while such emergency exists, as determined by the commissioner, the department may establish by written order or orders, rules and priorities for the distribution and use of any such product within the commonwealth. Whoever violates any provision of any such order shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than six months, or both.

The department, with the approval of the executive office for administration and finance, may, for the purpose of aiding in national defense in case of war or in any national emergency declared by the president, prepare and distribute without as well as within the commonwealth, and sell or give away, in its discretion, antitoxins, serums, vaccines, viruses and analogous products applicable to the prevention or cure of diseases of man, for the use of the armed forces of the United States or in civilian defense work. This paragraph shall not curtail any powers or duties of the department under section five.

Added by St.1941, c. 612. Amended by St.1964, c. 415.

§ 5B. Transportation, storage, packaging, sale, distribution, production and disposal of radioactive materials; rules and regulations; enforcement

The department may require registration of sources of ionizing radiation and shall, from time to time, after a public hearing, prescribe and establish rules and regulations to control the radiation hazards of radioactive materials and of machines which emit ionizing radiation for the purpose of protecting the general public and individuals against hazards associated with the use, transportation, storage, packaging, sale, distribution, production and disposal thereof. Such rules and regulations shall not limit the kind and amount of radiation that may be intentionally administered to a person or animal for diagnostic, therapeutic or experimental purposes by or under the direction of a physician, dentist, podiatrist, veterinarian or other person licensed to so administer radiation under the laws of the commonwealth. Such rules and regulations shall be filed with the Massachusetts commission on atomic energy at least thirty days prior to their effective date and shall become effective upon filing with the state secretary, unless a later effective date is specified by the department. Whoever violates any such rule or regulation shall be punished by a fine of not less than ten nor more than fifty dollars. Whoever, after due notice, continues to violate any such rule or regulation shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars to the use of the commonwealth for each offense. Each day of such violation after such notice shall constitute a separate offense. The supreme judicial court or superior court, upon application of the department, or upon application of any party interested, with the approval of the department, may enforce such rules and regulations, and restrain the use or occupation of premises or such portion thereof as the department may specify until such rules and regulations have been complied with.

Nothing in this section shall prevent the department of labor and industries from establishing rules and regulations for the protection of the health and safety of employees against ionizing radiation in any place of employment as defined in section one of chapter one hundred and forty-nine. Said department of labor and industries shall consult with the department of public health at least thirty days prior to the adoption or modification of any rules or regulations in so far as they pertain to the health aspects of ionizing radiation. The department of public health shall approve, modify, or disapprove all proposed rules and regulations of political subdivisions of the commonwealth in so far as they pertain to the health aspects of ionizing radiation and no such rules and regulations which do not have the approval of the department shall be adopted.

Added by St.1955, c. 335. Amended by St.1960, c. 633; St.1965, c. 495; St.1970, c. 443, § 15.

§ 5C. Repealed by St.1958, c. 79, § 1

§ 5D. Plastic bags and film; rules and regulations

The department shall make such rules and regulations concerning labeling, thickness and methods of use of plastic bags and plastic film as it shall deem necessary for the protection of the lives and safety of the public, which rules and regulations may provide penalties for the violation thereof not exceeding five hundred dollars for any one offence.

Added by St.1959, c. 501.

§ 5E. Application of chemicals to control aquatic nuisances; licenses; rules and regulations; violations; penalties; applicability of section

No person shall for the purpose of controlling algae, weeds and other aquatic nuisances therein apply chemicals to a lake, pond, stream, or other body of water within the territorial limits of the commonwealth without first obtaining a license from the department of environmental quality engineering in this section and sections five F and five G, called the department. The department shall, upon payment of a fee of twenty-five dollars, issue such license to any person whom it deems responsible and qualified to apply chemicals to lakes, ponds, streams, and other bodies of water for the control of algae, weeds and other aquatic nuisances. Such license shall be valid for a period of two years, and may upon payment of a fee of twenty-five dollars be renewed by the department for a like period. It shall not be transferable or assignable. Any such license may be revoked for cause by the department. Any applicant or licensee aggrieved by the failure of the department to grant an original license or to to renew the same or by the revocation of such license may, within thirty days after such failure or revocation, appeal in writing to the commissioner of the department of environmental management of the executive office of environmental affairs. Said commissioner shall within twenty days of the receipt of such appeal give the appellant a hearing and shall, within thirty days after such hearing, render a decision which shall be a matter of public record.

The department may, after a public hearing, establish rules and regulations relative to the issuance of licenses and the application of chemicals for the control of algae, weeds and other aquatic nuisances and may from time to time amend the same in like manner and may provide penalties for violations of said rules and regulations not exceeding five hundred dollars for any one offence.

Whoever, not being licensed, applies chemicals to a body of water for the purpose of controlling algae, weeds and other aquatic nuisances, except as hereinafter provided, shall be punished by a fine of not less than twenty-five nor more than five hundred dollars.

This section shall not apply to employees and agents of the departments of environmental quality engineering environmental management, and fisheries, wildlife, and recreational vehicles, or of the state reclamation board or of related federal agencies, while in the conduct of their official duties, nor shall it apply to the use of chemicals in privately owned ponds from which there are no flowing outlets, or to algaecides approved by the department and used by legally established water supply agencies to control taste and odors.

Added by St.1960, c. 677. Amended by St.1974, c. 806, § 13; St.1975, c. 706, §§ 164, 165.

§ 5F. Aquatic nuisances, control

The department shall undertake the control of algae, weeds and other aquatic nuisances in waters within the commonwealth in accordance with priorities established under this section; provided, however, no funds of the commonwealth shall be expended for a control program in waters to which there is no public access. In undertaking such control work the department shall consider the public health implications as they relate to public and private water supply uses, bathing and industrial process uses.

The department shall receive requests from any person or agency of the commonwealth to consider waters for control and shall submit to the water resources commission all such requests which it approves. The water resources commission shall review such requests and establish priorities for control, considering public accessibility, recreational and agricultural uses, the general public advantage, the importance to commercial, agricultural or other interests, the local interest therein as manifested by municipal or other contributions therefor, and other considerations affecting the feasibility, necessity or advantage of the proposed work. The water resources commission shall forward the results of its review to the department within a period of sixty days, and if such review is not completed within sixty days or within such further time as may be mutually agreed upon, the department shall establish priorities.

No work authorized under this section shall be begun until the department conducts bioengineering surveys to determine the types and extent of nuisance aquatic growth, evaluates water usages, establishes restrictions where necessary to protect the public health, safety and property, as well as fish and other animal life, and develops estimates of costs. Personnel of the department of environmental quality engineering in the performance of their duties under this section may enter upon, pass through or over private lands or property whether or not covered by water.

Added by St.1961, c. 498, § 1. Amended by St.1969, c. 722, § 2; St.1973, c. 594, § 1; St.1975, c. 706, § 166; St.1977, c. 363A, § 65.

§ 5G. Water supply; treatment facilities

The department may require by order a city, town, person or district maintaining a water supply to provide and operate such treatment facilities as are in its opinion necessary to insure the delivery of a safe water supply to all consumers. The supreme judicial or the superior court shall have jurisdiction in equity to enforce any such order.

Added by St.1961, c. 625. Amended by St.1977, c. 526, § 1.

§ 5H. Nuclear materials and reactors

(A) The department, subject to appropriation, shall adopt rules and regulations that monitor the use and release of nuclear materials, source materials, or radioactive materials, whether irradiated or not, as they pertain to the operation of nuclear reactors.

(B) The department shall, subject to appropriation, establish and maintain a monitoring and surveillance program for all nuclear reactors. Such a program shall include, but not be limited to, the following activities:—

(1) The department, subject to appropriation, shall create a network of monitoring stations not all in fixed locations, to ascertain the movement, dispersal and reconcentration of any radioactive materials originating from nuclear reactors, whether in gaseous, liquid or solid form. For the purpose of this section, the department may utilize, (I) equipment owned and operated by the department, (II) equipment maintained and operated by the nuclear reactor operators either directly or indirectly and (III) the data obtained therefrom.

(2) The department shall, subject to appropriation, conduct periodic surveys to determine the extent and seriousness of radiation doses received by humans and animal life resulting from the reconcentration of radioactive materials, released from nuclear reactors. Such surveys and monitoring programs may be conducted in cooperation with other departments or agencies of the common-

wealth or of any other state, or with the federal environmental protection agency, the nuclear regulatory commission, or any other federal agency, or with any other suitable qualified persons or institutions.

(3) The department shall, subject to appropriation, make inspections either announced or unnanounced, of each nuclear reactor installation or site located within the Commonwealth. For the purposes of such inspections, the department is hereby specifically authorized to enter at any time (I) upon the site of said nuclear reactor installation whether said reactor is proposed, under construction, or in operation and (II) any buildings or facilities thereon, as may be necessary, in the judgment of the department, to determine compliance with its rules and regulations adopted under the provisions of this section. Subject to appropriation, the commissioner may appoint and remove inspectors to comply with the provisions of this section. Said inspectors shall have all the power and authority of inspectors as defined by section nine of this chapter.

(C) The department shall, subject to appropriation, publish and make available to the general public or to any interested party on a semi-annual basis, for each operating nuclear reactor, a summary and discussion of the results of the monitoring and surveillance program for the previous six months, including the results of any surveys completed under provisions of clause (2) of paragraph (B).

The summary for each nuclear reactor shall include, at a minimum: (1) a comparison of actual emissions and emission rates of radioactive materials, whether in a liquid or gaseous form, with those allowed by the technical specifications appearing in the facility operating license of the reactor; (2) the estimated radiation doses received as a result of said emissions at various geographical locations under various occupancy assumptions; (3) a comparison of said estimated doses with applicable federal exposure guidelines; and (4) a listing and discussion of all accidents or abnormal occurrences, as defined by 42 USC sec. 5848,[1] that were reported to the nuclear regulatory commission, pursuant to 42 USC sec. 5841 to 5849,[2] inclusive, to rules and regulations promulgated under the authority of said statute, or to the requirements of the facility operating license of nuclear reactors.

(D) To support the development and operation of a state radiation monitoring program, the operators of nuclear reactors shall have reasonable charges levied against them.

Added by St.1979, c. 796, § 14.

[1] 42 U.S.C.A. § 5848.

[2] 42 U.S.C.A. §§ 5841 to 5849.

§ 5*I*. Laser equipment; rules and regulations; penalties for violation

The department may from time to time, after a public hearing, adopt, alter or repeal such rules and regulations relative to the use of laser systems, devices or equipment as it shall deem necessary to protect the public from the hazards of laser rays or beams, with penalties for the violation thereof not exceeding five hundred dollars for any particular offense. Such rules and regulations may require the registration of said systems, devices or equipment.

This section shall not be construed as limiting the powers of the department of labor and industry under the provisions of chapter one hundred and forty-nine relative to the prevention of accidents or injuries to employees.

Added by St.1968, c. 560.

§ 5J. Radiation treatment; precautions

Any person who administers radiation treatment of any kind to another person shall use lead shields to protect such other person when clinically appropriate. If such other person is a female, any person who so administers such radiation treatment shall inform her that radiation can be hazardous to an unborn child, shall inquire whether such female believes she is pregnant, and if the answers [1] is affirmative, take clinically appropriate precautions before administering such treatment.

[1] So in enrolled bill.

Added by St.1979, c. 529.

§ 6. Power to define diseases deemed dangerous to public health; control and prevention

The department shall have the power to define, and shall from time to time define, what diseases shall be deemed to be dangerous to the public health, and shall make such rules and regulations consistent with law for the control and prevention of such diseases as it deems advisable for the protection of the public health. The department shall also have the power to define, and shall from time to time so define, what diseases shall be included within the term venereal diseases in the provisions of the laws relative to public health.

Amended by St.1938, c. 265, § 7; St.1948, c. 129, § 1.

§ 6A. Hemophilia; program for care and treatment; definition

The department shall establish a program for the care and treatment of persons suffering from hemophilia. For the purposes of this and sections six B and six C, hemophilia shall mean a bleeding tendency resulting from a genetically determined deficiency of a clotting factor in the blood. This program shall assist persons who require continuing treatment with blood and blood derivatives to avoid crippling, extensive hospitalization and other effects associated with this condition, but who are unable to pay for the entire cost of such services on a continuing basis.

Added by St.1973, c. 1227.

§ 6B. Hemophilia advisory committee

The commissioner shall appoint a Hemophilia Advisory Committee, hereafter referred to as the committee, to consult with the department in the administration of this act. The committee shall be composed of five persons representing hospitals, the Massachusetts Blood Bank Association, voluntary agencies interested in hemophilia, medical specialists in hemophilia patient care and the general public.

The commissioner shall appoint one member as chairman. Each member shall hold office for a term of four years and until his successor is appointed and qualified. The committee shall meet as frequently as the chairman deems necessary, but not less than once each year.

The committee members shall serve without compensation but shall be reimbursed for actual expenses incurred in carrying out their official duties.

Added by St.1973, c. 1227.

§ 6C. Hemophilia program; powers and duties of department

The department shall:

(*a*) With the advice of the committee, develop standards for determining eligibility for and the nature of treatment under this program;

(*b*) Extend financial assistance to persons suffering from hemophilia in obtaining blood, blood derivatives and concentrates, and other efficacious agents for treatment of hemophilia in hospital, medical and dental facilities, and at home;

(*c*) Assist in the development and expansion of programs for the care and treatment of persons suffering from hemophilia, including self-administration, prevention, and home care and other medical and dental procedures and techniques designed to provide maximum control over bleeding episodes typical of this condition;

(*d*) Institute and carry on educational programs among physicians, dentists, hospitals, public health departments, and the public concerning hemophilia, including dissemination of information and the conducting of educational programs concerning the methods of care and treatment of persons suffering from this condition; and

(*e*) Promulgate all rules and regulations necessary to effectuate the purposes of this section and sections six A and six B.

Added by St.1973, c. 1227.

§ 7. Investigation of contagious or infectious diseases; notice

If smallpox or any other contagious or infectious disease declared by the department to be dangerous to the public health exists or is likely to exist in any place within the commonwealth, the department shall make an investigation thereof and of the means of preventing the spread of the disease, and shall consult thereon with the local authorities. It shall have co-ordinate powers as a board of health, in every town, with the board of health thereof. It may require the officers in charge of any city or state institution, charitable institution, public or private hospital, dispensary or maternity hospital, or any board of health, or the physicians in any town to give notice of cases of any disease declared by the said department to be dangerous to the public health. Such notice shall be given in such manner as the department may deem advisable. If any such officer, board or physician refuses or neglects to give such notice, he or they shall forfeit not less than fifty nor more than two hundred dollars.

§ 8. Use of common drinking cup or towel; rules and regulations

In order to prevent the spread of communicable diseases, the department may prohibit in hotels and in such public places, vehicles or buildings as it may designate the providing of a common drinking cup or a common towel, and may establish rules and regulations for this purpose. Whoever violates any such rule or regulation shall be punished by a fine of not more than twenty-five dollars.

§ 8A. Poisonous or corrosive substances; disposal or closures of containers

The department shall make such rules and regulations concerning the disposal or discard of containers of poisonous substances and concerning the closures of containers of corrosive substances intended for household use as it shall deem necessary for the protection of the lives and safety of the public, which rules and regulations may provide penalties for the violation thereof not exceeding five hundred dollars for any one offence.

Added by St.1959, c. 502. Amended by St.1960, c. 759.

§ 8B. Repealed by St.1973, c. 948, § 6

§ 8C. Fluoridation of public water supplies by local boards; advice of commissioner; election; discontinuance

The department in taking cognizance of the dental health of the people in the commonwealth shall recommend such methods as in its opinion are advisable to reduce or limit the prevalence of dental caries and other dental diseases and defects. If the commissioner determines that the fluoride content of the public water supply for domestic use in any city, town or district is not at optimum level for sound dental health, he shall so notify the local board of health of his findings. Such board of health, after making such inquiry and other use of the consulting services of the department or elsewhere as it chooses, shall, if it considers doing so in the best interest of the inhabitants of the city, town or district within its jurisdiction, order the upward adjustment of the fluoride content of the water supply available for domestic use in that city, town or district. No such order shall be effective until ninety days after it has been published in a newspaper having a general circulation in such city or town, or until favorable vote has been taken in accordance with the provisions of this section, whichever occurs later.

The provisions of this section shall not apply if two or more cities or towns are supplied water from the same source, if such supply to each city or town cannot be treated independently and if the majority of the boards of health representing such cities and towns have voted not to accept such recommendation; provided, however, that any such city or town desiring to adjust upward the fluoride content of the water consumed within its own jurisdiction may comply with the order by the installation of proper equipment that will comply therewith if it does not interfere with the water supply of said other cities or towns.

In any city, town or district where the board of health has ordered the upward adjustment of the fluoride content of the water supply under the provisions of this section, upon petition of ten per cent of the registered voters of said city, town or district, filed in the office of the city or town clerk, as the case may be, within ninety days of the publication of such order, the following question shall be placed upon the official ballot to be used at the next regular city election or for the election of town officers at the next annual town meeting or at a biennial state election, whichever occurs first, but not earlier than sixty days following the date of filing the petition with the city or town clerk:—"Shall the public water supply for domestic use in (this city) (this town) be fluoridated?", or in such district the following question shall be placed before the next annual meeting of the inhabitants of the district:—"Shall the public water supply for domestic use in this district be fluoridated?" If the majority of votes in answer to said question is in the negative, the water supply of such city, town or district shall not be fluoridated, and the fluoridation of such water supply shall not be ordered again by the board of health for a period of at least two years from the date of such vote.

Added by St.1968, c. 548, § 1. Amended by St.1971, c. 1024, §§ 1, 2; St. 1976, c. 129.

§ 9. Inspectors, analysts and chemists; appointment; removal; power and authority; interference with

In the performance of the duties relative to the sale of drugs and food the commissioner may appoint and remove inspectors, analysts and chemists. Such inspectors shall, in addition to the powers given by sections one hundred and twenty-one to one hundred and twenty-three, inclusive, of chapter ninety-four, have the same power and authority relative to drugs, fish, food and milk as is given inspectors of milk by sections thirty-five and sixty of said chapter. Such inspectors shall, in the enforcement of laws relative to controlled substances as defined in section one of chapter ninety-four C, have all the powers and authority of police officers and constables except the power to serve civil process. Inspectors assigned to investigate violations of laws relative to controlled substances as defined in section one of chapter ninety-four C may at the request of the commissioner carry revolvers, billies, clubs, handcuffs and any other paraphernalia necessary for their protection and the enforcement of such laws. Whoever hinders, obstructs or in any way interferes with any such inspector, analyst or chemist in the performance of his official duty shall for the first offence be punished by a fine of not more than fifty dollars, and for a subsequent offence by a fine of not more than one hundred dollars.

Amended by St.1957, c. 593; St.1964, c. 477, § 2; St.1972, c. 806, § 33.

§ 10. Chemical analyses of paint, turpentine, linseed oil or synthetic substitutes

The department shall make, free of charge, a chemical analysis of paint, turpentine, linseed oil, or any synthetic substitute for them, or any preparation containing the same, when submitted to it by the commissioner of public safety; and the department shall furnish to the said commissioner a certificate of the analysis, which shall be prima facie evidence of the composition and quality of the material so analyzed.

§ 11. Analyses of samples of alcoholic beverages

It shall analyze, in accordance with sections thirty-six to thirty-nine, inclusive, of chapter one hundred and thirty-eight, all samples of alcoholic beverages, as defined in section one of said chapter one hundred and thirty-eight, submitted to it for that purpose by the officers mentioned in said section thirty-six if satisfied that the analysis is to be used in enforcing the laws.

Amended by St.1934, c. 328, § 1.

§ 12. Analyses of narcotic drugs, poison, drugs, medicines or chemicals

It shall make, free of charge, a chemical analysis of any narcotic drug, or any synthetic substitute for the same, or any preparation containing the same, or any salt or compound thereof, and of any poison, drug, medicine or chemical, when submitted to it by police authorities or by such incorporated charitable organizations in the commonwealth, as the department shall approve for this purpose; provided, that it is satisfied that the analysis is to be used for the enforcement of law.

Amended by St.1943, c. 331, § 1.

§ 13. Certificate of result of analysis of narcotic drugs, poisons, drugs, medicines or chemicals; evidence

The analyst or an assistant analyst of the department shall upon request furnish a signed certificate, on oath, of the result of the analysis provided for in the preceding section to any police officer or any agent of such incorporated charitable organization, and the presentation of such certificate to the court by any police officer or agent of any such organization shall be prima facie evidence that all the requirements and provisions of the preceding section have been complied with. This certificate shall be sworn to before a justice of the peace or notary public, and the jurat shall contain a statement that the subscriber is the analyst or an assistant analyst of the department. When properly executed it shall be prima facie evidence of the composition and quality of the naroctic or other drug, poison, medicine or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he is such. A signed certificate of drug analysis furnished by an analyst, assistant analyst or other designated employee of the Drug Enforcement Administration of the United States Department of Justice, which conforms with the requirements of this section, shall be prima facie evidence of the composition and quality of the narcotic or other drug, poison, medication or chemical analyzed and the court shall take judicial notice of the signature of the analyst, assistant analyst or other designated employee, and the fact that he is such.

Amended by St.1943, c. 331, § 2; St.1977, c. 128.

§ 14. Remedies for prevention of ophthalmia neonatorum

It shall furnish, free of cost, to registered physicians such prophylactic remedies as it may deem best for the prevention of ophthalmia neonatorum.

§ 14A. Rheumatic fever; treatment of patients

The department shall purchase and distribute to the boards of health in cities and towns penicillin and such other prophylactic drugs as the commissioner may approve for the treatment of persons recovering from rheumatic fever, and said local board of health may furnish such drugs free of cost to any such person when they are prescribed for him by his physician, provided that such person, or the person bound by law to support him, is unable to pay for such drugs.

Added by St.1960, c. 678.

§ 15. Services for division of animal health

It may perform for the division of animal health, upon such terms and conditions as may be agreed upon, such services in its laboratory as may be necessary in the examination of materials from animals suspected of being infected with glanders, tuberculosis, rabies or other diseases of domestic animals.

Amended by St.1934, c. 340, § 7; St.1967, c. 347, § 2.

§ 16. Unsanitary condition of barns, stables or enclosures in which cattle are kept; report

It shall report to the director of animal health all cases brought to its attention where barns, stables or other enclosures, in which neat cattle, other ruminants or swine are kept, are in an unsanitary condition.

Amended by St.1934, c. 340, § 8; St.1967, c. 347, § 3.

§ 17. Disposal of sewage; consultation, advice or experiments; hearing; improvements; definition

The department of environmental quality engineering, in this section called the department, shall consult with and advise the officers of towns and persons having or about to have systems of water supply, drainage or sewerage as to the most appropriate source of water supply and the best method of assuring its purity, or as to the best method of disposing of their drainage or sewage with reference to the existing and future needs of other towns or persons which may be affected thereby. It shall also consult with and advise persons engaged or intending to engage in any manufacturing or other business whose drainage or sewage may tend to pollute any inland water as to the best method of preventing such pollution, and it may conduct experiments to determine the best methods of the purification or disposal of drainage or sewage. No person shall be required to bear the expense of such consultation, advice or experiments. Towns, districts and persons shall submit to said department for its advice and approval their proposed system of water supply or of the disposal of drainage or sewage, and no such system shall be established without such approval. All petitions to the general court for authority to introduce a system of water supply, drainage or sewerage shall be accompanied by a copy of the recommendation, advice and approval of said department thereon. The department may after a public hearing require a town, person, district or water company to make such improvements relative to any existing treatment, works or system of water supply as in its judgment may be necessary for the protection of public health. In this section the term "drainage" means rainfall, surface and subsoil water only, and "sewage" means domestic and manufacturing filth and refuse.

Amended by St.1937, c. 340; St.1975, c. 706, § 167; St.1977, c. 526, § 2.

§ 18. Powers and duties of district health officer

Every district health officer shall inform himself respecting the sanitary condition of his district and concerning all influences dangerous to the public health or threatening to affect the same; he shall gather all information possible concerning the prevalence of tuberculosis and other diseases dangerous to the public health within his district, shall disseminate knowledge as to the best methods of preventing the spread of such diseases, and shall take such steps as, after consultation with the department and the local authorities, shall be deemed advisable for their eradication.

§ 19. Annual report of district health officer

Every such officer shall keep a record of his proceedings and observations, shall annually on or before December first make a report thereof to the department, shall from time to time furnish the department with such information as it may require of circumstances affecting the public health in his district, and shall in every instance where a written suggestion is made by him to the local authorities send a copy of such suggestion to said department.

§ 20. Inspection of correctional institutions; findings and recommendations; report

At least twice each year the department shall inspect each correctional institution, as defined in section one of chapter one hundred and twenty-five, and shall file a report of its findings and recommendations with respect to each such facility with the department of correction, the secretary of human services, the superintendent or administrator of each such facility, and the general court.

Amended by St.1947, c. 76; St.1972, c. 777, § 4.

§ 21. Rules for police stations, lockups, jails, prisons and reformatories

The department shall make rules for police station houses, lockups, houses of detention, jails, houses of correction, prisons and reformatories, regarding the care and use of drinking cups and of dishes used for food, the care and use of bedding, the ventilation of the buildings and minimum plumbing facilities for human habitation. Such rules may be general or applicable to a single building. A copy of such rules as are applicable to station houses, houses of detention or lockups shall be sent by the said department to the mayor of every city and to the selectmen of every town to which the rules apply; and a copy of such rules as are applicable to jails, houses of correction, prisons or reformatories shall be sent by the department to the proper authorities. Said officials shall enforce said rules.

Amended by St.1968, c. 274.

§ 22. Approval of plans for police station houses, houses of detention or lockups

No station house, house of detention or lockup shall be built until the department has approved in writing the plans, the provisions for lighting, heating and ventilation and for the disposal of sewage, and the dimensions and form of construction of the cells.

§ 23. Annual report of commissioner of environmental quality engineering; recommendations; prosecutions

The commissioner of environmental quality engineering shall make an annual report, including the results of the examination of main outlets of sewers and drainage of towns and the effect of sewage disposal, with such recommendations for the preservation of the interest of persons and property and for the prevention of offensive odors and objectionable conditions as he considers expedient, together with recommendations for the prevention of the pollution of waters used for ice or water supply and for the removal of polluting substances, in order to protect and develop the rights and property of the commonwealth therein and protect public health; and he may recommend any legislation or plans for systems of main sewers necessary for the preservation of the public health and for the purification and prevention of pollution of ponds, streams and inland waters of the commonwealth. The commissioner of environmental quality engineering shall include in his annual report the number of prosecutions by the department of environmental quality engineering and an itemized account of the money expended by it in enforcement actions.

Amended by St.1975, c. 706, §§ 168, 169.

§ 24. Publication of parts of annual report; manual of laws

The department may publish for general distribution such parts of its annual report to the general court and such other matter as it may deem adapted to promote the interests of the public health in the commonwealth. The department shall publish every five years for distribution among boards of health and other health agencies a manual of the laws relating to boards of health in the commonwealth, containing such information upon the same subject as it may deem expedient. The cost of any publications referred to in this section shall be paid out of the appropriation for the general expenses of the department.

Amended by St.1937, c. 365; St.1939, c. 234; St.1945, c. 292, § 10.

§ 24A. Reduction of morbidity and mortality; establishment of program; information and reports

The commissioner may authorize or cause to be made scientific studies and research which have for their purpose the reduction of morbidity and mortality within the commonwealth.

All information, records of interviews, written reports, statements, notes, memoranda, or other data procured in connection with such scientific studies and research conducted by the department, or by other persons, agencies or organizations so authorized by the commissioner shall be confidential and shall be used solely for the purposes of medical or scientific research.

The furnishing of such information to the department or to the authorized representative of such an authorized study or research project, shall not subject any person, hospital, sanitarium, rest home, nursing home or other person or agency furnishing such information, to any action for damages or other relief.

Such information, records, reports, statements, notes, memoranda, or other data shall not be admissible as evidence in any action of any kind in any court or before any other tribunal, board, agency or person. Such information, records, reports, statements, notes, memoranda, or other data shall not be exhibited nor their contents disclosed in any way, in whole or in part, by any officer or representative of the department, nor by any other person, except as may be necessary for the purpose of furthering the study or research project to which they relate. No person participating in such an authorized study or research project shall disclose, in any manner, the information so obtained except in strict conformity with such research project. Any person who discloses such information in violation of this section shall be punished by a fine of fifty dollars.

Added by St.1960, c. 624.

§ 24B. Birth information; statistical purposes

Upon the birth of any child the physician, administrator or other person in charge of a hospital shall forward to the commissioner any information which the said commissioner deems necessary for administrative, research and statistical purposes. The commissioner shall provide such forms as he shall prescribe which shall bear the caption "Confidential Information", and when such information is forwarded to the commissioner it shall not constitute a public record nor be available except as may be necessary for the foregoing purposes.

Added by St.1968, c. 358, § 3. Amended by St.1976, c. 486, § 18.

§ 24C. Pregnant women; medical assistance, counseling, etc.

The department shall, in cooperation with other appropriate state agencies, establish a program to encourage the providing of medical assistance, counseling and financial support to enable pregnant women to carry pregnancies to full term and delivery.

Added by St.1979, c. 268, § 11.

§ 25. Publication of certificate of examination or results of analyses

The department shall publish in each issue of its official departmental publication, and also, if in its opinion the public health can be served thereby, may publish in one or more newspapers in the commonwealth, a certificate of the examination or analysis made under its authority during the preceding months of any article of food manufactured or offered for sale in the commonwealth which is adulterated within the meaning of chapter ninety-four; and it shall also publish, with such certificate of examination, a statement of the trade mark, brand mark or name, with the name and place of business of the manufacturer, appearing upon the package or box containing such adulterated article, or with the name and place of business of the wholesale dealer of whom the goods were obtained.

§ 25A. Inventory of health care resources and related information; status as public record; reporting regulations; publication; inter-agency cooperation; contracts authorized

The department, in order to identify the location, distribution and nature of all health care resources in the commonwealth shall establish and maintain on a current basis an inventory of all such resources together with all other reasonably pertinent information concerning such resources. For purposes of this section, a health care resource shall include any resource, whether personal or institutional in nature and whether owned or operated by any person, the commonwealth or political subdivision thereof, the principal purpose of which is to provide, or facilitate the provision of, services for the prevention, detection, diagnosis or treatment of those physical and mental conditions experienced by humans which usually are the result of, or result in, disease, injury, deformity, or pain; and provided that the term "treatment" shall include custodial and rehabilitative care incident to infirmity, developmental disability or old age.

Such inventory and all related information shall be maintained in a form usable by the general public in a designated office of the department, shall constitute a public record, and shall be coordinated with information collected by the department under other provisions of law, federal and state census information, and other vital statistics from reliable sources; provided, however, that any item of information which is confidential or privileged in nature shall not be regarded as a public record under this section.

The department may require health care resources to provide information for the purposes of this section and may prescribe by regulation uniform reporting requirements. In prescribing such regulations the department shall strive to make any reports required under this section of mutual benefit to those providing as well as those using such information, and shall avoid placing any burdens on such providers which are not reasonably necessary to accomplish the purposes of this section.

The department shall publish analyses, reports and interpretations of information collected under this section in order to further public knowledge concerning the distribution and nature of health care resources in the commonwealth.

Agencies of the Commonwealth which collect cost or other data concerning health care resources shall cooperate with the department in coordinating such data with information collected under this section.

In the performance of its duties, the department, subject to appropriation, may enter into such contracts with agencies of the federal government, the Commonwealth or its political subdivisions, and public or private bodies, as it deems necessary; provided, however, that no information received under such a contract shall be published or relied upon for any purpose by the department unless the department has determined such information to be reasonably accurate by statistical sampling or other suitable techniques for measuring the reliability of information-gathering processes.

Added by St.1972, c. 715.

HEALTH CARE FACILITIES

§ 25B. Definitions

In this section and sections twenty-five C to twenty-five G, inclusive, the following words shall have the following meanings:

"Appropriate regional comprehensive health planning agency," the regional agency designated pursuant to the provisions of section three hundred and fourteen (*b*) the Federal Public Health Service Act,[1] which has geographical jurisdiction of the area served by a health care facility.

"Construction", construction of a new health care facility; the alteration of, expansion of, making of major repairs to, remodeling of, renovation of or replacement of an existing health care facility; the initial, additional or replacement equipping of any such facility; the acquisition of consulting, architectural, and engineering services, and of site, when such acquisition is directed toward an undertaking sufficiently specific to constitute part of the subject matter of an application for determination of need under section twenty-five C.

"Department", the department of public health; provided, however, that no member of the public health council who is an owner, in whole or in part, an officer or an employee of a health care facility, or who bears any other fiduciary relationship to such a facility, shall participate in any decision which would substantially affect the facility to which he is related.

"Health care facility", a hospital, institution for the care of unwed mothers or clinic, as defined in section fifty-two; a long-term care facility, which is an infirmary maintained in a town, a convalescent or nursing home, a rest home or a charitable home for the aged, as defined in section seventy-one; a clinical laboratory subject to licensing under chapter one hundred and eleven D, a public medical institution, which is any medical institution, and, after December first, nineteen hundred and seventy-two, any institution for the mentally ill or retarded, supported in whole or in part by public funds, staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing, approval or certification for participation in the programs administered under Titles 18 and 19 of the Federal Social Security Act,[2] by the department; and any part of such facilities; provided, however, that "health care facility" shall not include a facility operated by a religious group relying solely on spiritual means through prayer and healing and in which health care by or under the supervision of doctors of medicine, osteopathy, or dentistry is not provided.

"State comprehensive health planning agency", the agency designated pursuant to the provisions of section three hundred fourteen (*a*) of the Federal Public Health Service Act.[3]

"Substantial capital expenditure", the expenditure of a sum of money, including an expenditure for the lease of capital equipment at the purchase value of such equipment, for construction of a health care facility which exceeds, or may reasonably be regarded as leading to an expenditure for construction in excess of, one hundred and fifty thousand dollars for an undertaking sufficiently specific to constitute the subject matter of an application for determination of need under section twenty-five C.

"Substantial change in services", a change in kind, rather than degree, of service as further defined by the department; provided, however, that any increase in bed capacity of more than four beds shall be a substantial change in service; and, provided further, that any decrease in the level of service offered by a nursing, convalescent or rest home, and any change in service provided by a hospital to persons who are not admitted as inpatients, which does not involve a substantial capital expenditure shall not be subject to the provisions of sections twenty-five C to twenty-five G, inclusive.

Added by St.1972, c. 776, § 3. Amended by St.1975, c. 881, § 3; St.1977, c. 945, § 2.

[1] 42 U.S.C.A. § 246(b).

[2] See 42 U.S.C.A. §§ 1395 et seq., 1396 et seq.

[3] 42 U.S.C.A. § 246(a).

§ 25C. Determination of need; exempt projects; policy; application; filing; fee; emergencies; procedural requisites; time limits; conditions; review

Notwithstanding any contrary provision of law, no person or agency of the commonwealth or any political subdivision thereof shall make substantial capital expenditures for construction of a health care facility or substantially change the services of such a facility unless there is a determination by the department that there is need therefor; provided, however, that no such determination shall be required whenever any such expenditure in excess of one hundred and fifty thousand dollars or any change in service (1) shall be essential to the conduct of research in the basic biomedical or health care delivery areas or to the training of health care personnel, (2) shall at no time result in any increase in the clinical bed capacity or outpatient load capacity of the facility, and (3) the cost of such expenditure or change shall cause no increase in the total patient care charges of the facility to the public for health care services, supplies, and accommodations, as such charges shall be defined from time to time in accordance with section five of chapter four hundred and nine of the acts of nineteen hundred and seventy-six. Any health care facility undertaking any such expenditure essential to the conduct of such research or training which shall exceed or may reasonably be regarded as likely to exceed one hundred and fifty thousand dollars, or any such change in service essential to the conduct of such research or training, shall give written notice thereof to the department and the rate setting commission at least twenty-one days before undertaking such expenditure or change in service; and any such expenditure or change of service made in violation of this section shall subject the facility to liability for a civil penalty of not more than one thousand dollars for each day of such violation assessable by the superior court in an appropriate action brought by the attorney general. Said statement shall assure that such expenditure or change (1) shall be essential to the conduct of research in the basic biomedical or health care delivery areas or to the training of health care personnel, (2) shall at no time result in any increase in the clinical bed capacity or outpatient load capacity of the facility, and (3) shall cause no increase in the total patient care charges, as defined in accordance with section five of chapter four hundred and nine of the acts of nineteen hundred and seventy-six, of the facility to the public for health care services, supplies and accommodations.

The department, in making any such determination, shall encourage appropriate allocation of private and public health care resources and the development of alternative or substitute methods of delivering health care services so that adequate health care services will be made reasonably available to every person within the commonwealth at the lowest reasonable aggregate cost.

Applications for such determination shall be filed with the department, together with such other forms and information as shall be prescribed by, or acceptable to, the department. A duplicate copy of such application, together with supporting documentation therefor, shall be a public record and kept on file in the department. The department may require a public hearing on any such application. A reasonable fee, established by the department, shall be paid upon the filing of such application; provided, that in no event shall such fee exceed one tenth of one per cent of the capital expenditures, if any, proposed by the applicant.

Except in the case of an emergency situation determined by the department as requiring immediate action to prevent further damage to the public health or to a health care facility, the department shall not act upon an application for such determination unless (*a*) the application has been on file with the department for at least thirty days, (*b*) the state and appropriate regional comprehensive health planning agencies and, in the case of long-term care facilities only, the department of elder affairs, have been provided copies of such application and supporting documents and given reasonable opportunity to comment thereon, and (*c*) a public hearing has been held thereon when requested by the applicant, the state or appropriate regional comprehensive health planning agency, or any ten taxpayers of the commonwealth. The department may establish filing periods for such applications; and in such event shall not act only upon an individual application filed during such a period when such action would implicitly decide any other application filed during such period.

The department shall so approve or disapprove in whole or in part each such application for a determination of need within eight months after filing with the department; provided that the department may, on one occasion only, delay such action for up to two months after the applicant has provided information which the department reasonably has requested during such eight month period. Applications remanded to the department by the health facilities appeals board pursuant to the provisions of section twenty-five E shall be acted upon by the department within the same time limits provided in this section for the department to approve or disapprove applications for a determination of need. Any application which has not been acted upon by the department within such time limits shall be deemed to have been approved.

Such determinations of need shall be based on the written record compiled by the department during its review of the application and on such criteria consistent with sections twenty-five B to twenty-five G, inclusive, as were in effect on the date of filing of the application. In compiling such record the department shall confine its requests for information from the applicant to matters which shall be within the normal capacity of the applicant to provide. In each case the action by the department on the application shall be in writing and shall set forth the reasons therefor; and every such action and the reasons therefor shall constitute a public record and be filed in the department.

The department shall stipulate the period during which a determination of need shall remain in effect, which in no event shall originally be longer than three years but which may be extended by the department for cause shown. Any such determination shall continue to be effective only upon the applicant (*a*) making reasonable progress toward completing the construction or substantial change in services for which need was determined to exist, (*b*) complying with all other provisions of law relating to the construction, licensure, and operation of health care facilities, and (*c*) complying with such further terms and conditions as the department reasonably shall require.

The department shall notify the secretary of elder affairs forthwith of the pendency of any proceeding, of any public hearing and of any action to be taken under this section on any application submitted by or on behalf of any long-term care facility.

Added by St.1972, c. 776, § 3. Amended by St.1973, c. 1168, §§ 20, 21; St.1977, c. 945, §§ 3, 4.

§ 25D. Financing; notice of intent; necessity of application for determination of need; acceptance of gifts; governmental bodies as applicant; report

Every person, at least thirty days prior to making a public solicitation of funds or otherwise securing financing for construction of a health care facility or a substantial change in the services of a facility, shall file written notice of his intent to do so with the department. In the case of a solicitation of funds from the general public, the department may require such person to file an application for a determination of need for such construction or substantial change in services and to postpone any such public solicitation of funds until such application has been acted upon by the department and such need has been found to exist; provided, however, that failure of the department to comment upon a notice of intent shall not be construed to constitute a determination that such need exists. Nothing in this section shall be construed to prohibit any person or agency subject to sections twenty-five C to twenty-five G, inclusive, from accepting gifts, and the provisions of this section shall not apply to any such solicitation or securing of financing where the undertaking to be funded is not sufficiently specific to constitute the subject matter of an application for determination of need under section twenty-five C.

Each agency of the commonwealth and its political subdivisions desiring to make substantial capital expenditure for construction of a health care facility or to substantially change the services of such a facility shall make application for determination of need therefor pursuant to section twenty-five C, and the department shall transmit a report of its determination thereon to the agencies empowered to recommend and to make appropriations of money for the applicant agency.

Added by St.1972, c. 776, § 3.

§ 25E. Administrative appeal; hearing; decision; judicial review

Any person or agency filing an application for determination of need or empowered to request a public hearing under the provisions of section twenty-five C, and aggrieved by the determination thereof may, within fourteen days after such determination, file an appeal to the health facilities appeals board established by section one hundred and sixty-six of chapter six. The appellant shall include with any such appeal a certificate stating that said appeal is not knowingly interposed for delay.

The board in considering any such appeal shall restrict itself to a review of materials on file with the department and to consideration of whether the determination appealed from was an abuse of discretion, without observance of procedure required by law or in violation of applicable provisions of law. In the event the board determines that the materials available to it are inadequate to allow the required consideration, it may order a hearing on the appeal. Such appeal shall be heard by the board or its designated hearing officer within thirty days after its filing. If the matter is heard by a hearing officer, such officer, within thirty days after hearing, shall submit a recommended decision, reasons therefor and a determination of each issue of fact or law incident to said recommended decision to the board. The board shall, within sixty days after filing of the appeal, issue a final decision, either denying the appeal, in which case said decision shall be subject to judicial review under the provisions of section fourteen of chapter thirty A to the extent they are not inconsistent with the provisions of this section, or order the matter remanded to the department for action consistent with the opinion of the board. All proceedings of the board shall be subject to the provisions of chapter thirty A to the extent they are not inconsistent with the provisions of this section.

Added by St.1972, c. 776, § 3.

§ 25F. Rules and regulations; effective date

The department and the health facilities appeals board are hereby authorized and directed to promulgate rules and regulations necessary for the implementation of sections twenty-five C to twenty-five G, inclusive; provided, however, that no new promulgated rule or regulation shall take effect before the thirtieth day next following the date which a copy of the rule or regulation shall have been filed with the joint committee on health care of the general court.

Added by St.1972, c. 776, § 3. Amended by St.1977, c. 945, § 5.

§ 25G. Enforcement; jurisdiction; effect of violations

The superior and supreme judicial courts shall have jurisdiction, upon request of the department, the appropriate regional comprehensive health planning agency, or of any ten taxpayers in the commonwealth to enforce the provisions of sections twenty-five C to twenty-five G, inclusive. Any violation of such provisions also shall constitute grounds for refusing to grant or renew, modifying or revoking the license of a health care facility or of any part thereof.

Added by St.1972, c. 776, § 3.

§ 25H. Unused medication; return by health care facilities

The commissioner by rules and regulations may provide that either a resident or consultant pharmacist in a health care facility may return to the pharmacy from which it was purchased any unused medication provided that such medication is sealed in unopened, individually packaged units and within the recommended period of shelf life, and provided that such medication is not a controlled substance as defined in chapter ninety-four C. Such rules and regulations shall permit the pharmacy to which such medication is returned to restock and redistribute such medication, and shall be required to reimburse or credit the purchaser for any such returned medication.

Added by St.1977, c. 339.

CITY AND TOWN BOARDS OF HEALTH

§ 26. Boards of health in cities; membership; appointment; removal; compensation

In each city, except as hereinafter provided, the board of health shall consist of three persons, one of whom shall be a physician. No one of them shall be a member of the city council. One member shall be appointed in January of each year for three years from the first Monday of the following February. Unless otherwise provided in the city charter, the members shall be appointed by the mayor, subject to confirmation by the board of aldermen, and may be removed by the mayor for cause, and vacancies shall be filled by appointment for the residue of the unexpired term. Members of the board shall receive such compensation as the city council may determine. Boards of health in towns shall be chosen as provided in chapter forty-one. This section shall not apply to any city in which a different type of organization is authorized by special legislative act or by the acceptance of sections twenty-six A to twenty-six E, inclusive.

Amended by St.1946, c. 268, § 1.

§ 26A. Health departments in cities; commissioners

A city, by accepting the provisions of this section and sections twenty-six B to twenty-six E, inclusive, by vote of the city council and approval of the mayor, and a town, by accepting the provisions of said sections by vote of the town, may create a health department to replace the board of health therein. Such health department shall consist of a commissioner of health who shall perform and exercise the duties and powers of a board of health, with the advice of an advisory council of health.

Added by St.1946, c. 268, § 2.

§ 26B. Commissioner of health in cities; appointment; removal; qualifications

In a city the mayor, with the approval of the city council, unless otherwise provided in the city charter, and in a town the board of selectmen, if authorized by a vote of the town, shall appoint, and may remove for cause, a commissioner of health who shall be a citizen of the United States who has been graduated from a medical school approved by the state authority for the approval of medical schools, and either shall be the holder of a degree of public health with at least two years' full-time experience in a responsible position in public health service, or shall have had four years' full-time experience in a responsible position in such service. He shall be eligible to be registered to practice medicine under the laws of the commonwealth. Said commissioner shall devote his entire time to the performance of his duties and the supervision of the employees of the department. He shall be appointed in January for a period of five years beginning the first Monday of the following February, and until the qualification of his successor. Any vacancy in office shall be filled for the balance of the unexpired term in the same manner as the original appointment. His salary shall be such as the city council or selectmen may determine.

Added by St.1946, c. 268, § 2.

§ 26C. Advisory council of health in cities; members; qualifications; appointment; terms; removal; compensations; meetings; function

The advisory council of health shall consist of nine persons, two of whom shall be registered physicians and five of whom shall be nonprofessionals. For the purposes of this section "nonprofessionals" shall mean a person whose background and experience indicate that he is qualified to act in the broad public interest. Such person, his spouse, parents, siblings or children shall not be employed by a health care facility, by a nonprofit service corporation established in accordance with chapters one hundred seventy-six A to one hundred seventy-six E, inclusive, nor by a corporation authorized to insure the health of individuals. Such person or his spouse shall not be licensed to practice medicine. No member of said council shall be a member of the city council. The members of said council first appointed hereunder shall be appointed as follows:—three members to serve for one year, three members to serve for two years, and three members to serve for three years, from the first Monday of the following February, and until the qualification of their respective successors, and thereafter three members shall be appointed in January of each year for three years from the first Monday of the following February, and until the qualification of their respective successors. In a city, unless a different mode of appointment or election is provided in the city charter, the members shall be appointed by the mayor, subject to confirmation by the city council, and in a town the members shall be appointed by the board of selectmen. Members may be removed in the same manner, for cause, and vacancies shall be filled in the same manner, by appointment for the remainder of the unexpired term. Members of the advisory council of health shall be compensated at ten dollars a day while on duty plus expenses incurred in line of duty. Said council shall meet quarterly and additional meetings may be held at any time at the call of the commissioner of health who shall act as chairman of said council. The advisory council of health shall advise and assist the commissioner of health.

Added by St.1946, c. 268, § 2. Amended by St.1973, c. 204, § 1.

§ 26D. Abolition of boards of health in cities and towns upon qualification of commissioner

Upon the qualification of the commissioner of health first appointed under section twenty-six B, the terms of the then existing members of the board of health of the city or town shall terminate and said offices shall thereupon be abolished.

Added by St.1946, c. 268, § 2.

§ 26E. Rules and regulations for departments of health; assistants and clerks

Every such commissioner of health shall make rules and regulations for the department of health, its officers, agents and assistants. He may appoint such necessary assistants and clerks as may be required to execute the health laws and regulations of the department. They shall devote their entire time to the performance of their duties unless specifically employed on a part-time basis.

Added by St.1946, c. 268, § 2.

§ 27. Organization of boards; appointment of physician and clerk; compensation

Every such board shall organize annually by the choice of one of its number as chairman. It may make rules and regulations for its own government and for the government of its officers, agents and assistants. It may appoint a physician to the board, who shall hold his office during its pleasure, may choose a clerk, who in a city shall not be a member of the board, and may employ the necessary officers, agents and assistants to execute the health laws and its regulations. It may fix the salary or other compensation of such physician and its clerk and other agents and assistants.

§ 27A. Appointment of health officer by two or more towns; duties; compensation; joint committee

Two or more towns may, by vote of each, form a district for the purpose of employing therein a health officer and necessary assistants and clerks, all of whom shall be appointed and may be removed by a joint committee composed of the boards of health of said towns. Persons so employed shall perform such duties and receive such compensation as said joint committee shall determine and, in so far as their duties in a given town are concerned, shall be the employees of and responsible to the regularly constituted board of health of said town. Said joint committee shall annually elect a chairman and a secretary and shall determine the relative amount of service to be performed in each town of the district by persons employed hereunder. The treasurer of one of the towns of the district designated by the joint committee shall be treasurer of the district and shall give to the district a bond with a surety company authorized to transact business in the commonwealth as surety, for the faithful performance of his duties as treasurer of the district, in such sum and upon such conditions as the joint committee may require. Said joint committee, annually in the month of December, shall estimate the amount of money required to pay the costs and expenses of the district for the following year, shall fix and determine the proportion of such costs and expenses to be paid by the respective towns thereof during such year and shall certify the amount so determined for each such town to the assessors thereof who shall include the same in the tax levy of such year. Upon order of the board of health of each such town, the town treasurer thereof shall, from time to time, subject to the provisions of section fifty-two of chapter forty-one, pay to the district treasurer such sums not exceeding the amount certified by the joint committee as the town's share of the costs and expenses of the district. The district treasurer shall disburse the money so received, upon warrants approved by the health officer. Any constituent town may, by vote passed prior to December first in any year, withdraw from the district, such withdrawal to become effective on January first following. This section shall not apply in the county of Barnstable nor shall it authorize any city to join in forming such a district.

Amended by St.1932, c. 209; St.1963, c. 145.

§ 27B. Regional health districts; regional board of health; powers and duties; administration; organization; management; accounts; rules and regulations

Two or more municipalities may, in a city having a Plan E charter by the affirmative vote of a majority of all members of the city council, in other cities by vote of the city council and approval of the mayor, and by vote of a town at a regular annual town meeting, form a regional health district which shall consist of a regional board of health, a director of health and his staff. The regional health district shall have all the powers and shall perform all the duties conferred upon, or exercised by, the boards of health and health departments of the constituent municipalities under any law or ordinance pertaining thereto, except in so far as the regional health district may by majority vote delegate certain powers and duties to the constituent municipalities.

The regional health district, hereinafter referred to as the district, shall be administered by a full-time director of health, who shall be either (*a*) a physician, graduated from an approved school of medicine and registered or eligible for registration to practice medicine in the commonwealth, with one year of full-time graduate public health academic training or two years of full-time experience, and not engaged in private practice while serving as director of health; or (*b*) a lay person with professional academic training equivalent to a bachelor's degree and with five years of satisfactory full-time experience in generalized public health programs, or a lay person with ten years of full-time satisfactory administrative experience and supervision of generalized public health programs. When a lay health officer is employed, there shall be employed a registered physician to perform such medical functions as are required.

The regional board of health, hereinafter referred to as the board, shall be comprised of at least one representative from each constituent municipality. Each constituent municipality having a population greater than ten thousand shall have one additional representative to the board for every population unit of ten thousand or major fraction thereof beyond the first ten thousand. In no instance shall there be more than five representatives from a single municipality on a board. Towns shall at a town meeting select, or change the method of selecting, their representative or representatives by any of the following methods:—(*a*) by appointment of the board of health, (*b*) by appointment of the selectmen, (*c*) by vote at the annual town meeting, or (*d*) by any other method decided at the annual town meeting. In cities such representatives shall be appointed by the mayor with the approval of the city council, or in cities having Plan E charters by the city manager, unless a definite mode of appointment is otherwise provided by the city charter. When the district includes one or more entire counties, the county commissioners of each entire county shall appoint an additional representative to the board. Each representative shall serve for a period of three years, excepting that at its initial organization the board shall decide the term of years for the first representatives who shall be elected or appointed to the board, so that thereafter approximately one third of the representatives will be elected or appointed each year. Said representatives shall serve without compensation, but shall receive their necessary traveling expenses from the board while in the performance of their official duties. Representatives to the board may be re-elected or reappointed for a maximum of two terms. The board shall meet annually and at such other times as it shall determine by its rules or when requested by the chairman of the board or the director of health.

Any constituent municipality may, by vote passed prior to July first in any year, withdraw from the district, such withdrawal becoming effective January first following; provided, that the municipality shall have been a member of the district for at least five years.

The board shall select a treasurer, who may be the treasurer of one of the constituent municipalities, to act as treasurer for the district. For the faithful performance of his duties, said treasurer shall give bond, with a surety company authorized to transact business in the commonwealth, in such sums and upon such conditions as the board may require. Said board, annually in the month of December, shall (*a*) estimate the amount of money required to pay the cost and expense of the district for the following year, (*b*) fix and determine by a majority vote the proportion of such costs and expenses to be paid by the individual municipalities thereof during such year, and (*c*) certify the amount so determined for each municipality to the assessors thereof, who shall include same in the tax levies of each year, and each municipality shall appropriate such sum for the district. In apportioning the costs, the board by a majority vote may use any of the following formulae as a basis for their apportionment:—(*a*) valuation according to the latest state valuation, establishing the basis of apportionment of state and county taxes, (*b*) population as determined by the most recent estimate by the secretary of the commonwealth, exclusive of universities and federal, state and county institutions, (*c*) a combined formula of valuation according to the latest state valuation and population as determined by the most recent estimate by the secretary of the commonwealth, exclusive of universities and federal, state and county institutions, or (*d*) any other method decided by majority vote of the board. Upon order of the board, the treasurer of each constituent municipality thereof shall from time to time, subject to the provisions of section fifty-two of chapter forty-one, pay to the treasurer of the district the amount certified by the board as the municipality's share of the cost and expenses of the district. The treasurer of the district shall disburse the money so received upon warrant approved by the director of health and signed by the chairman or vice-chairman of the board. The accounts of each district shall be audited annually by the bureau of accounts of the department of corporations and taxation, under the provisions of sections thirty-five, forty and forty-one of chapter forty-four.

The board shall appoint, and may reappoint, for a term of five years, a director of health, hereinafter referred to as the director, as provided in this section. The board may remove the director for cause after proper notice and a public hearing. The director shall serve as secretary of the board, but shall have no vote. He shall be the executive and administrative head of the district, and may, with the approval of the board, designate one or more deputies and may appoint and employ, with like approval, such assistants as may be provided for in the budget. The director shall prepare and present annually to the board a report and a budget for its approval, together with such recommendations as he may deem proper. The board shall make and promulgate reasonable rules and regulations, for which notice and public hearing shall be given in the same manner and extent as required by the provisions of section thirty-seven of chapter thirty and section two of chapter thirty A. The board shall also (*a*) take evidence in appeals, (*b*) consider plans and appointments required by law, (*c*) hold hearings, and (*d*) discharge other duties required by law; but it shall have no administrative or executive functions. The board may delegate the holding of hearings to the director or his deputies. The board may elect an executive committee consisting of its chairman, vice-chairman, secretary and such other members as its rules may determine. Said executive committee shall have the authority to act for the board when the board is not in session.

All full-time incumbents of any office or position brought under the district at the time of its formation shall be transferred thereto without loss of civil service, retirement or other rights. All positions and offices of the district, including the director, but excluding representatives to the board, shall be subject to the provisions of chapter thirty-two, and all such included offices and positions shall be placed in the county retirement system of the county which has the majority of the population of the area served by the district at the time of its organization. Ninety days after the organizational meeting of the board, all district positions and offices, except the director and the representatives to the board, not under the provisions of chapter thirty-one at the time of the formation of the regional board of health, shall be placed within the civil service in the manner provided by chapter thirty-one and the rules and regulations promulgated thereunder, and all positions and offices subsequently established by the board shall be subject to the provisions of said chapter thirty-one and the rules and regulations thereof, unless the board by a majority vote within ninety days after its organizational meeting votes not to extend the provisions of said chapter to any or all of such eligible positions and offices. At any time after such a vote to exclude, however, the board by a majority vote may bring within the provisions of chapter thirty-one, in the manner set forth therein, any or all positions and offices, except the director and the representatives to the board, which were excluded but which are still subject to the jurisdiction of the board. The wages and salaries of all offices and positions, including those subject to chapter thirty-one, shall be determined by the board.

Added by St.1953, c. 600, § 1. Amended by St.1954, c. 273; St.1954, c. 681, § 8.

§ 27C. Regional health districts; reimbursement; qualification; statement

Each regional health district established under the provisions of section twenty-seven B shall be entitled to reimbursement from the commonwealth, to an amount not exceeding in the aggregate fifty cents per inhabitant of the constituent cities and towns, as determined by the last state or federal census, for expenditures incurred by it for initial capital outlays, including in such term the acquisition, construction, improvement or renovation of any buildings or premises for the use of the district and any original furnishings and equipment therefor, but excluding the costs of supplies, salaries and other expenses for the ordinary maintenance and operation of such district. In order to qualify for such reimbursement a regional board of health shall, before incurring any expenses reimbursable under this section, submit to the commissioner of public health an itemized statement of all proposed expenditures for such purposes. The commissioner shall examine such statement and shall notify said board to what extent, in his opinion, the proposed expenditures are reasonably necessary for the purposes of the regional health district and reimbursable hereunder, and the probable amount of reimbursement therefor. Within three months after the date of final payment for such capital outlays the said board shall submit to the commissioner a certified statement of its actual expenditures for such purposes. The commissioner shall, if he is satisfied that the expenditures so certified are reimbursable and not unreasonable or excessive, certify to the comptroller and the treasurer shall forthwith pay to such regional health district, from any amounts appropriated therefor, the amount of such approved reimbursement.

Added by St.1953, c. 600, § 1.

§ 28. Annual reports

In each city such board shall annually in January make a full and comprehensive report to the city council of its acts during the preceding year and of the sanitary condition of the city. It shall also, if the city council or the standing committee on finance thereof so requires, send to the city auditor a detailed estimate of the appropriation required by its department for the next financial year.

§ 29. Weekly reports of deaths from diseases dangerous to public health

Boards of health shall send to the department every week, upon forms to be prescribed by it, a report of deaths in their towns for the week ending Saturday noon, from all diseases declared by the department to be dangerous to the public health.

§ 30. Agents; appointment; inspections

Boards of health may appoint agents or directors of public health to act for them in cases of emergency or if they cannot conveniently assemble, and any such agent or director shall have all the authority which the board appointing him had; but he shall in each case within two days report his action to the board for its approval, and shall be directly responsible to it and under its direction and control. An agent or director of public health appointed to make sanitary inspections may make complaint of violations of any law, ordinance or bylaw relative to the public health.

Amended by St.1961, c. 55.

§ 31. Health regulations; publication; violation

Boards of health may make reasonable health regulations. All regulations made by boards of health under this chapter shall be published once in a newspaper published in the town, and such publication shall be notice to all persons. Whoever, himself or by his servant or agent, or as the servant or agent of any other person or any firm or corporation, violates any reasonable health regulation, made under authority of this section, for which no penalty by way of fine or imprisonment, or both, is provided by law, shall be punished by a fine of not more than twenty dollars.

Amended by St.1937, c. 285.

§ 31A. Permit for removal or transportation of garbage; application; approval

No person shall remove or transport garbage, offal or other offensive substances through the streets of any city or town without first obtaining a permit from the board of health of such city or town. An application for such permit shall be in such form and contain such information, on oath, as such board shall require. All such permits shall expire at the end of the calendar year in which they are issued, but may be renewed annually on application as herein provided. No permit shall be transferred except with the approval of the said board.

Notwithstanding the foregoing provisions, any person may, without such a permit, transport garbage, offal or other offensive substances through the streets of a city or town in which said substances were not collected; provided, that he registers with the board of health of such city or town; and, provided further, that he transports said substances in accordance with such reasonable rules and regulations as may be established by such board of health.

Amended by St.1937, c. 282; St.1945, c. 423.

§ 31B. Rules and regulations for removal of garbage; penalty

Boards of health shall, from time to time, make rules and regulations for the control of the removal, transportation or disposal of garbage, offal or other offensive substances. Whoever violates any provision of section thirty-one A, or of any rule or regulation made thereunder, shall be punished by a fine of not more than fifty dollars.

Added by St.1937, c. 282.

§ 31C. Atmospheric pollution; regulation and control; publication; hearings; penalties; enforcement; jurisdiction; injunction

A board of health, or other legal authority constituted for such purpose by vote of the town or city council shall have jurisdiction to regulate and control atmospheric pollution, including, but not limited to, the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors and dusts as may arise within its bounds and which constitutes a nuisance, a danger to the public health, or impair the public comfort and convenience.

Said board of health or other legal authority, subject to the approval of the department of environmental quality engineering, in this section called the department, may from time to time adopt reasonable rules and regulations for the control of atmospheric pollution. Before the board of health or other legal authority submits such rules and regulations to the department for approval, such board or other legal authority shall hold a public hearing thereon, of which notice shall be given by publication for one day in each of two successive weeks in a newspaper published in the town, the first publication to be at least fourteen days prior to the date of the hearing, or if no newspaper is published in such town, by posting a copy of such notice in a public place therein. Said rules and regulations, when approved by the department, and after publication in a newspaper published in the town, or, if no newspaper is published in such town, after posting a copy in a public place, shall have the force of law.

The department shall advise the board or other legal authority in all matters of atmospheric pollution. The department may, upon request of the board of health or other legal authority of a town adversely affected by atmospheric pollution arising in another town, after a hearing to all parties interested, assume joint jurisdiction to regulate or control such cause of atmospheric pollution and may exercise all powers of the local board of health or other legal authority under provisions of the General Laws or any special laws.

Whoever violates any order, rule or regulation promulgated or adopted under the provisions of this section shall be punished, for the first offence, by a fine of not less than fifty dollars nor more than one hundred dollars and for a subsequent offence, by a fine of not less than two hundred dollars nor more than five hundred dollars. For the purpose of this paragraph each day or part thereof of violation of such an order, rule or regulation whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offence.

Rules and regulations promulgated or adopted under the provisions of this section shall be enforced by said board of health or other legal authority either of which may delegate the power to enforce specific regulations to other agencies or departments of the same city or town. The superior court shall have jurisdiction in equity to enforce such rules and regulations and may restrain by injunction any violation thereof.

Added by St.1954, c. 672, § 4. Amended by St.1963, c. 483; St.1970, c. 841, §§ 1 to 3; St.1975, c. 706, § 170.

§ 31D. Privy, cesspool and septic tank contents; disposal; investigation of facilities; joint action

Cities, towns and sewerage districts may, subject to the approval of the department of environmental quality engineering, provide facilities for the receipt and disposal of privy, cesspool and septic tank contents collected for hire by private persons and may establish such charges for the use of such facilities as may be necessary for defraying the cost of construction, operating and maintaining the same.

The commissioner of environmental quality engineering may investigate facilities for the receipt and disposal of privy, cesspool and septic tank contents in cities, towns and sewerage districts. If in his opinion he determines such facilities are inadequate for proper disposal of such contents, he may recommend necessary action for the protection of the public. If after a reasonable time, the city, town or sewerage district fails to act upon his recommendation in a manner satisfactory to him, upon an order issued by the department of environmental quality engineering, a city, town or sewerage district shall provide facilities for the receipt and disposal of privy, cesspool and septic tank contents collected for hire by private persons. The city, town or sewerage district may establish such charges for the use of such facilities as may be necessary for defraying the cost of constructing, operating and maintaining the same.

Nothing in this section shall prevent a city, town or sewerage district, or a combination of cities and towns or cities, towns and a sewerage district from acting jointly in carrying out the provisions of this section.

Added by St.1967, c. 455. Amended by St.1969, c. 795; St.1975, c. 706, §§ 171 to 173; St.1979, c. 131.

§ 32. Retention of cases by board of health

A board of health shall retain charge of any case arising under this chapter in which it has acted.

Amended by St.1974, c. 260, § 4.

SANITARY STATIONS

§ 33. Construction and maintenance of sanitary stations

In every city, and in every town having a population of over ten thousand, when, in the opinion of the board of health, public necessity requires it, there shall be established and maintained by the town in some convenient places, at or near the business centre, one or more sanitary stations, with separate water closets for the use of each sex. Their number and location shall be determined by the board of health.

BAKERIES

§§ 34 to 49. Repealed by St.1937, c. 362, § 6

HOSPITALS, CLINICS AND DISPENSARIES

§ 50. Establishment and maintenance of dental, medical and health clinics; appropriations

Towns may establish and maintain dental, medical and health clinics, and in connection therewith may conduct campaigns of general education relative to matters of public health. Acting through their respective boards of health, they may unite and co-operate for the foregoing purposes and may provide for the maintenance of clinics as aforesaid in one or more of the towns so uniting.

All appropriations made for the purposes of this section shall be expended under the direction of the local board of health, and clinics established hereunder shall be conducted subject to such rules and regulations as said board may establish.

§ 51. Hospitals, institutions for unwed mothers or clinics; licensing

The department shall issue for a term of two years, and shall renew for like terms, a license, subject to revocation by it for cause, to any person whom it deems responsible and suitable to establish or maintain a hospital, an institution for the care of unwed mothers or a clinic, which meets the requirements of the department established in accordance with its rules and regulations. In the case of the transfer of ownership of a hospital, an institution for the care of unwed mothers or a clinic, the application of the new owner for a license, when filed with the department on the date of transfer of ownership, shall have the effect of a license for a period of three months. If a license has not been issued by the department upon the expiration of said three months period, all the patients shall be transferred or discharged from such hospital or such institution for unwed mothers, and the hospital, institution for unwed mothers, or clinic, as the case may be, shall cease operating.

No original license shall be issued to establish or maintain a hospital, an institution for the care of unwed mothers or a clinic, unless there is determination by the department that there is need for such a facility at the designated location.

No original license shall be issued to establish a hospital, except a college and school infirmary, unless it complies with the construction standards of the state building code, is of at least type 1–B fireproof construction, and shall have been constructed for the purpose.

In the case of new construction of a hospital, an institution for unwed mothers or a clinic, or in the case of alterations or additions to an existing hospital, an institution for unwed mothers or a clinic, preliminary architectural plans and final architectural plans and specifications shall be submitted to the division of hospital facilities of the department. Written approval of the final architectural plans and specifications shall be obtained from said division prior to said new construction or alterations or additions.

No original license shall be issued nor shall a license be renewed hereunder unless there shall be first submitted to the department by the authorities in charge of the hospital, the institution for unwed mothers or the clinic, with respect to each building occupied by patients, (1) a certificate of inspection of the egresses, the means of preventing the spread of fire and the apparatus for extinguishing fire, issued by an inspector of the division of inspection of the department of public safety, and (2) a certificate of inspection issued by the head of the local fire department certifying compliance with the local ordinances.

Any applicant for an original or renewal license who is aggrieved by a written disapproval of a certificate of inspection by the head of the local fire department or by the division of inspection of the department of public safety, may, within thirty days from such disapproval, appeal in writing, to the department of public safety. Failure to either approve or disapprove within thirty days, after a written request by an applicant, shall be deemed a disapproval.

If the department of public safety approves the issuance of a certificate of inspection, it shall forthwith be issued by the agency that failed to approve. If said department disapproves, the applicant may appeal therefrom to the superior court. Failure of the department of public safety to either approve or disapprove the issuance of a certificate of inspection within thirty days after receipt of an appeal shall be deemed a disapproval. No original license shall be issued and no license shall be renewed by the department of public health until issuance of an approved certificate of inspection, as required in this section.

Upon a written request by an applicant who is aggrieved by the revocation of a license or the refusal of the department to renew a license, the commissioner and the council shall hold a public hearing, after due notice, and thereafter they may modify, affirm or reverse the action of the department. In no case shall the revocation of such a license take effect in less than thirty days after written notification by the department to the hospital, the institution for unwed mothers or the clinic. There shall be no new admissions to such hospital, an institution for unwed mothers or a clinic during the thirty day period herein referred to; and upon the expiration of said thirty days all the patients shall be transferred or discharged therefrom and the hospital or the institution for unwed mothers or the clinic shall cease operating.

The fee for the issue or renewal of each license in the case of a hospital or an institution for unwed mothers shall be fifty dollars, and in the case of a clinic shall be ten dollars for corporations organized under chapter one hundred and eighty, or unincorporated, nonprofit associations; and in the case of all other clinics, the fee shall be twenty-five dollars. The license shall not be transferable and shall be issued only for the premises described in the application.

Amended by St.1943, c. 16, § 1; St.1967, c. 891, § 1; St.1977, c. 868, § 1.

§ 51A. Out-of-hospital dialysis units; licensing

The department shall establish rules and regulations for the licensing of out-of-hospital dialysis units not operated as a part of a hospital licensed under this chapter. The department shall issue for a term of two years and renew for a like term, a license to maintain an out-of-hospital dialysis unit to any person whom it deems responsible and suitable to establish and maintain such a unit; provided, that said person presents evidence satisfactory to the department that said person has and maintains a written agreement with a hospital licensed under this section which maintains a chronic dialysis unit for supportive services deemed necessary by the department through regulation. Any license so granted shall be deemed an original license. Said licenses shall be subject to suspension, revocation, or refusal to renew for cause, subject to the provisions of this section. The fee for issue or renewal of said license shall be twenty-five dollars.

Added by St.1973, c. 1186, § 2.

§ 51B. Pregnancy clinics

Local boards of health, hospitals, dispensaries or other agencies may establish and maintain clinics or other services for pregnant girls and women for the purpose of carrying pregnancies to full term and delivery. For the purpose of this section, such other services may include medical treatment for such pregnant persons and, their unborn or newborn children, and reasonable transportation costs to and from the place where such treatment is given, subject to the rules and regulations which the department may from time to time establish.

Added by St.1978, c. 202.

§ 52. Definitions applicable to sections 51 to 56, inclusive

In sections fifty-one to fifty-six, inclusive, the following words shall have the following meanings:

"Hospital", any institution, however named, whether conducted for charity or for profit, which is advertised, announced, established or maintained for the purpose of caring for persons admitted thereto for diagnosis, medical, surgical or restorative treatment which is rendered within said institution.

"Institution for unwed mothers", any institution or place, however named, whether conducted for charity or profit which is advertised, announced, established or maintained for the purpose of caring for one or more unwed mothers admitted thereto, on a resident basis, for prenatal care, supervision and short-term postnatal care.

"Clinic", any entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established, or maintained for the purpose of providing ambulatory medical, surgical, dental, physical rehabilitation, or mental health services. In addition, "clinic" shall include any entity, however organized, whether conducted for profit or not for profit, which is advertised, announced, established, or maintained under a name which includes the word "clinic", "dispensary", or "institute", and which suggests that ambulatory medical, surgical, dental, physical rehabilitation, or mental health services are rendered therein. With respect to any entity which is not advertised, announced, established, or maintained under one of the names in the preceding sentence, "clinic" shall not include a medical office building, or one or more practitioners engaged in a solo or group practice, whether conducted for profit or not for profit, and however organized, so long as such practice is wholly owned and controlled by one or more of the practitioners so associated, or, in the case of a not for profit organization, its only members are one or more of the practitioners so associated or a clinic established solely to provide service to employees or students of such corporation or institution. No matter how the clinic is named, "clinic" shall not include a clinic conducted by a hospital licensed under section fifty-one or by the federal government, the commonwealth, or a local health department.

"Original license", a license issued to a hospital, institution for unwed mothers or clinic, not previously licensed; or a license issued to an existing hospital, institution for unwed mothers or clinic, in which there has been a change in ownership or location.

"Out-of-hospital dialysis unit", a unit, however named, maintained separately from a hospital or a license issued thereto, whether conducted for charity or for profit, for the purpose of providing dialysis treatment to persons suffering from renal disease. It shall not include a dialysis unit maintained as part of a hospital.

"Practitioner", any individual who may diagnose and treat medical, surgical, dental, physical rehabilitation, or mental health problems without limitation within the confines of his profession.

Amended by St.1967, c. 891, § 2; St.1973, c. 1186, § 3; St.1979, c. 674, §§ 1, 2.

§ 53. Classification of hospitals; rules and regulations; inspections

The department shall classify all hospitals. The department shall, after a public hearing, promulgate rules and regulations for the conduct of hospitals and clinics. Such rules and regulations shall include requirements for diagnostic and therapeutic facilities for the study, diagnosis, treatment and care of patients, and the keeping of proper medical records. The department shall, after a public hearing, promulgate rules and regulations for the conduct of institutions for unwed mothers. Such rules and regulations shall include requirements for the care and supervision of unwed mothers, and the keeping of proper medical records. The department shall promulgate rules and regulations for the conduct of out-of-hospital dialysis units, which rules and regulations shall include requirements for the care and treatment of patients, the keeping of proper medical records, provisions for the referral of patients to the unit, provisions for the referral of patients to other modes of treatment, including kidney transplant and home dialysis and provisions of in-hospital and other supportive services as deemed necessary by the department through regulation. The department or its agents may visit and inspect at any time any institution, entity, or unit subject to licensure under section fifty-one.

Amended by St.1943, c. 16, § 2; St.1967, c. 891, § 3; St.1973, c. 1186, § 4; St. 1979, c. 674, § 3.

§ 53A. Hospitals and in-patient clinics to offer and perform "Pap tests"

Every hospital and in-patient clinic licensed by the department or financially supported in whole or in part by the commonwealth or any political subdivision thereof shall offer to administer to any female, eighteen years of age and older, admitted as a patient to said hospital or clinic a Papanicolaou's Stain or Pap test, so-called, provided said female shall pay the cost of such test.

Added by St.1977, c. 359.

§ 54. Audit of medical records

The department shall, when deemed necessary, but not more than once in each year, order an audit of the medical records required to be kept by a hospital, institution for unwed mothers, out-of-hospital dialysis units or a clinic under the provisions of section fifty-three. Such audit shall be made by persons designated by the department, shall be conducted under the direction of the department and be made entirely at the expense of such hospital, institution for unwed mothers, out-of-hospital dialysis units or clinic, as the case may be.

Amended by St.1943, c. 16, § 3; St.1967, c. 891, § 4; St.1973, c. 1186, § 5.

§ 55. Advisory council

There shall be an advisory council on the licensing of hospitals, hospital surveys and construction planning, consisting of the commissioners of public health, mental health and public welfare, ex officiis, and twelve persons, who shall include representatives of nongovernmental organizations or groups, of agencies of the commonwealth concerned with the operation, construction or utilization of hospitals, and of consumers of hospital services selected from persons familiar with the need of such services in urban or rural areas, to be appointed by the governor. As the term of office of an appointive member expires, his successor shall be appointed by the governor, in like manner, for a term of four years. No member shall be reappointed for more than two years. The commissioner of public health shall be the chairman of the council. Members of said council shall serve without compensation but each member shall be paid by the commonwealth the traveling expenses necessarily incurred by him in connection with the performance of his official duties.

Said advisory council shall in order to carry out the Hospital and Medical Facilities Amendments of 1964 (P.L. 88–443),[1] and any other applicable federal law, consult with and advise the department in any matter relative to surveying the need for hospitals and to developing a program for constructing the same.

Amended by St.1967, c. 891, § 5.

[1] 42 U.S.C.A. § 291 et seq.

§ 56. Penalties; enforcement of sections fifty-one to fifty-six

Whoever advertises, announces, establishes or maintains, or is concerned in establishing or maintaining a hospital, an institution for unwed mothers or a clinic, without a license granted under section fifty-one, or whoever being licensed under said section violates any provision of section fifty-one to fifty-three, inclusive, shall, for a first offense, be punished by a fine of not more than five hundred dollars, and for a subsequent offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years. A separate and distinct offense shall be deemed to have been committed on every day during which any violation continues after written notice thereof by the department to the authority in charge of the hospital, the institution for unwed mothers or the clinic concerned. The commissioner shall report to the attorney general any violation of sections fifty-one to fifty-six, inclusive.

The supreme judicial or superior court shall have jurisdiction upon the filing of a civil complaint by the department to restrain and enjoin any violation of sections fifty-one to fifty-six, inclusive, or any regulations promulgated thereunder, and to take such other action as equity and justice may require to enfore them.

Amended by St.1967, c. 891, § 6; St.1979, c. 674, § 4.

§ 57. Establishment and maintenance of tuberculosis dispensaries; rules and regulations; inspection

Every city having a population of fifty thousand or more, as determined by the last national census, shall establish and maintain within its limits a dispensary for the discovery, treatment and supervision of needy persons resident within its limits and afflicted with tuberculosis, unless there already exists in such city a dispensary satisfactory to the department. Every city having a population of less than fifty thousand, as determined as aforesaid, and every town may, and at the request of the department shall, establish and maintain a similar dispensary. Such dispensaries shall be subject to the regulation of the boards of health of the cities and towns where they are respectively situated, and shall be inspected by and be satisfactory to the department. A city or town which, upon the request of the department, refuses or neglects to comply with the provisions hereof shall forfeit not more than five hundred dollars.

§ 57A. Establishment and maintenance of cancer clinics

The department, with or without the cooperation of local boards of health, hospitals, dispensaries or other agencies, shall establish and maintain cancer clinics in such parts of the commonwealth as it may deem most advantageous to the public health, and may otherwise provide services and treatment for cancer, subject to such rules and regulations as the department may from time to time establish. For the purposes of this section, "providing treatment" shall include providing transportation, or the reasonable cost of such transportation, to and from the place where treatment is given whenever the patient is not able to pay for such transportation.

Added by St.1943, c. 436, § 1.

§ 57B. Establishment and maintenance of muscular dystrophy clinics

The department, with or without the co-operation of local boards of health, hospitals, dispensaries or other agencies, shall establish and maintain muscular dystrophy clinics in such parts of the commonwealth as it may deem most advantageous to the public health, and may otherwise provide services and treatment for muscular dystrophy and other similar diseases, subject to such rules and regulations as the department may from time to time establish. For the purposes of this section, "providing treatment" shall include providing transportation, or the reasonable cost of such transportation, to and from the place where treatment is given whenever the patient is not able to pay for such transportation.

Added by St.1953, c. 382.

§ 57C. Establishment and maintenance of clinics for the aging

The department, with the co-operation of local boards of health, hospitals, dispensaries or other agencies shall establish and maintain clinics for the aging in such parts of the commonwealth as it may deem most advantageous to the public health and may otherwise provide services and treatment for aging citizens subject to such rules and regulations as the department may from time to time establish. For the purposes of this section, "services and treatment" shall include transportation, or the reasonable cost of such transportation, to and from the place where treatment is given whenever the patient is not able to pay for such transportation.

Added by St.1954, c. 538, § 1.

AGENCIES GIVING DAY CARE TO CHILDREN

§§ 58 to 62. Repealed by St.1972, c. 785, § 4

CHILDREN'S HEALTH CAMPS

§ 62A. Establishment of children's health camps in cities and towns

In each city and town which accepts this and the six following sections, in a city by vote of its city council subject to the provisions of its charter, or in a town by vote of its inhabitants, there shall, except as provided by section sixty-two F, be established, without unreasonable delay, one or more children's health camps for the care and treatment of children of school age in said city or town who upon examination are found to be in need of such care and treatment, but no child shall be given care or medical treatment whose parent or guardian objects thereto.

§ 62B. Commission on children's health camps; membership; appointment

In each such city and town there shall be an unpaid commission, called the commission on children's health camps, to consist of the mayor or chairman of the board of selectmen, who shall have no vote, the superintendent of schools, the members of the board of health, all to serve ex officiis, and also seven residents of such city or town to be appointed by the mayor or the chairman of the board of selectmen. One member of said board shall be designated as chairman by the mayor or the chairman of the board of selectmen. Of the seven persons first appointed after such acceptance, two shall be appointed for terms of one year each, two for terms of two years each, and three for terms of three years each, and thereafter as the term of each member expires his successor shall be appointed for the term of three years. Each appointment made to fill a vacancy in said commission shall be for the balance of the unexpired term.

§ 62C. Powers and duties of commission

Said commission shall establish, maintain and have control of all children's health camps for the purposes named in section sixty-two A, and in addition shall have the management of all sums appropriated by the city or town for the maintenance of such children's health camps. Said commission may receive in trust for the aforesaid purposes any gift or bequest of money or securities and shall forthwith transfer any money or securities so received to the city or town treasurer, who shall administer the same as provided by the following section.

§ 62D. Investment by city or town treasurer of money and securities received from commission; bond

The city or town treasurer shall invest, reinvest and hold in the name of said commission any money or securities, or the proceeds thereof, received from said commission under the preceding section, and shall disburse the income or principal thereof on its order; provided, that no disposition of either income or principal shall be made which is inconsistent with the terms of the trust on which the property is held. The treasurer shall furnish a bond satisfactory to the commission for the faithful performance of his duties relative to such property

§ 62E. Records; annual reports of receipts and disbursements

The commission shall keep a record of its doings and at the close of each financial year shall make a report to the city or town, showing the total amount of such funds and other receipts, together with investments, receipts and disbursements on account of the same, setting forth in detail the sources of the receipts and the purposes of the expenditures.

§ 62F. Formation of union children's health camp district by two or more cities or towns; management; commission; membership

Any two or more such cities or towns may vote to form, for such period of time not exceeding five years as such cities or towns may from time to time determine, a union children's health camp district for the purpose of establishing therein one or more union children's health camps. The management of such union children's health camps in such district shall be vested in an unpaid commission, called the commission on union children's health camps, to consist of the following persons from each of the cities or towns constituting such union, namely, the mayor or chairman of the board of selectmen, who shall have no vote, the superintendent of schools, the members of the board of health, all to serve, ex officiis, and also not exceeding ten members, residents of the cities and towns comprising the district, to be elected by the ex officiis members of the commission for terms commensurate with the duration of the agreement forming or continuing the union. The term of each person elected to fill a vacancy among the members not serving ex officiis shall be for the balance of the unexpired term. The treasurer of said commission shall be the treasurer for the time being of such city or town within the district as is determined by the members of the commission. The provisions of sections sixty-two C to sixty-two E, inclusive, so far as applicable, shall apply to such commission.

§ 62G. Location and construction plans for health camp; approval; inspection

No children's health camp shall be established under section sixty-two C or sixty-two F unless the location and construction plans of such camp have been approved by the department, which may inspect any camp at any time.

§ 62H. Contracts for care and treatment of children as compliance with sections 62A to 62G.

A contract for the care and treatment of children coming within the provisions of section sixty-two A, entered into by the commission on children's health camps of a city or town which accepts or has accepted sections sixty-two A to sixty-two G, inclusive, or by a commission on union children's health camps established or to be established under section sixty-two F, with the persons having control of any institution approved by the department in or near said city or town, shall, while such contract remains in force and effective, be deemed satisfactory compliance on the part of such city or town or union with the provisions of said sections sixty-two A to sixty-two G, inclusive, relative to the establishment and maintenance of children's health camps. No such contract shall become effective until it has been approved by the department.

MASSACHUSETTS HOSPITAL SCHOOL AND HOSPITAL FOR STATE MINOR WARDS

§ 62*I*. Hospital school and hospital for state minor wards; general supervision

The department shall have general supervision of the Massachusetts hospital school and hospital for state minor wards.

Added by St.1954, c. 508, § 1.

§ 62J. Purpose of school; children from other states; inpatient or outpatient services

The Massachusetts hospital school shall be maintained primarily for the education and care of crippled and deformed children of the commonwealth. When there is no child of the commonwealth on the entrance waiting list, crippled children from outside the commonwealth may be admitted to said hospital school, subject to such rules and regulations as the board of trustees may adopt; provided, however, that all costs for the care and treatment of such children are paid by their sponsors or other persons or agencies.

Subject to appropriation and subject to the provisions of sections twenty-five B to twenty-five G, inclusive, the department shall also be authorized to establish at the Massachusetts hospital school any inpatient or outpatient services, including but not limited to medical, surgical, restorative, rehabilitative or chronic services, mental health and mental retardation services, extended care services, dental services, rehabilitative therapy services, family planning services, services for treatment of alcoholism and drug addiction, skilled nursing care services, intermediate care facility services, and residency care services.

Added by St.1954, c. 508, § 1. Amended by St.1969, c. 619; St.1975, c. 752, § 1.

§ 62K. Trustees; corporation; additional powers and duties; grants; devises; gifts; trusts

The trustees shall be a corporation for the purpose of taking and holding, by them and their successors, in the name of the commonwealth, and in accordance with the terms thereof, any grant or devise of land or any gift or bequest of money or other personal property made for the use or benefit of the school, its inmates, former inmates or graduates or any association thereof, or for the use or benefit of state minor wards assigned to the care of the trustees under sections sixty-two P to sixty-two S, inclusive, and for the purposes of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other securities, with all the powers necessary to effect said purposes. For said purposes the trustees may employ such agencies as they may from time to time determine to be wise and proper, including any trust company or other corporation authorized by law to administer trusts, and may from funds received as aforesaid or the income thereof pay such expenses as may be necessary for the wise administration of such gifts or trusts, or may, with the approval of the governor and council, delegate any powers conferred by this section upon any such trust company or corporation. In the use, management and administration of such gifts or trusts, the trustees or their agents shall in their discretion so act as most effectively to aid the beneficiaries in accordance with the terms of the gift or trust, and when so acting their judgments and determinations in extending or denying aid or benefit to any individual shall be conclusive and final. No trustee shall be answerable for the use of any money or property received by any beneficiary or for the default or neglect of any co-trustee, or of any agent employed hereunder, or of any corporation to which power is delegated or transferred as herein authorized.

Added by St.1954, c. 508, § 1.

§ 62L. Administration of school; appointment of personnel; expenses

The trustees may appoint all persons necessary for the proper administration of the affairs of the school, and may incur all expenses necessary for the maintenance thereof.

Added by St.1954, c. 508, § 1.

§ 62M. Admissions; applications; discharges; tuition

The trustees may, upon application of any child entitled to receive the benefit of said school, or upon such application by a parent, guardian or person having the legal custody of the child, or by any state or municipal department, board or officer having such custody, admit such child to said school, subject to such rules and regulations as the trustees may prescribe, and the trustees may discharge such child from the school; provided, that no such rule or regulation shall prohibit the admission of a child for the reason that he commutes to said school or that he is able to pay the charges for his support at said school. The charges for the support of the children who are of sufficient ability to pay for the same, or have persons or kindred bound by law to maintain them, shall be paid by such children, such persons or such kindred at a rate determined by the rate setting commission established under chapter six A. The board of such children as reside in a town shall be paid by the town at a rate not exceeding seventeen dollars and fifty cents a week, notice of the reception of the children by the trustees being given by them to the town as soon as practicable; and the tuition and board of those having no such settlement shall be paid by the commonwealth. The trustees may receive other children having no means to pay for tuition and support, and the tuition and board of all such children shall be paid by the commonwealth. The attorney general and district attorneys shall upon request bring action to recover said charges in the name of the state treasurer. The admission of a child as aforesaid to the school shall be deemed a commitment of the child to the care and custody of the commonwealth, and the trustees, with the approval of the department, may detain the child at said school during its school age, or for such longer period during its minority as in the opinion of the trustees will tend to promote the education and welfare of the child.

Added by St.1954, c. 508, § 1. Amended by St.1967, c. 252; St.1968, c. 492, § 4; St.1973, c. 1229, § 4A; St.1974, c. 260, § 5.

§ 62N. Inspection of schools; report; audit

There shall be a thorough inspection of the school by two of the trustees thereof monthly, and by a majority of them quarterly, and by all of them semi-annually, and after each inspection a written report of the state of the institution shall be drawn up. The treasurer shall present his report at said annual meeting and the trustees shall then audit it. The commissioner shall make an annual report of the acts of the trustees.

Added by St.1954, c. 508, § 1.

§ 62*O*. Accounts and books of treasurer; inspection by trustees

The accounts and books of the treasurer shall at all times be open to the inspection of the trustees.

Added by St.1954, c. 508, § 1.

§ 62P. Construction and maintenance of hospital for state minor wards

The trustees of the Massachusetts hospital school, subject to supervision by the department, may construct from time to time, as appropriations are made by the general court, and thereafter may maintain, suitable buildings for the hospital care and treatment of such state minor wards as may be assigned to their care by the said department.

Added by St.1954, c. 508, § 1.

§ 62Q. Powers and duties of trustees; management; admissions; approval

The said trustees shall have the same powers and shall perform the same duties in the management and control of the said hospital for state wards as are vested in and required of them in their administration and control of the hospital school under sections sixty-two J to sixty-two O, inclusive, so far as applicable. No state ward shall be admitted to or received at the said hospital without the approval of the trustees and the written order of an authorized agent of the department, nor released from said hospital without notice to the said department.

Added by St.1954, c. 508, § 1. Amended by St.1975, c. 752, § 2.

§ 62R. Use of land, buildings and farm products by hospital school and hospital for state minor wards

Any land acquired or buildings erected for the Massachusetts hospital school or the hospital for state minor wards, unless it is otherwise expressly provided, and also any farm product raised at the said hospital school, or at the said hospital, may, as the trustees shall from time to time determine, be used either interchangeably or exclusively for said hospital school or said hospital, or in common for the benefit of both institutions, and for the care and maintenance of their respective inmates, officers, employees and attendants. Such officers, employees and attendants shall, as required by the trustees, render service to either or both of the said institutions. Any sewer, heating, ventilating, water or similar plant or system may so be used, separately or jointly.

Added by St.1954, c. 508, § 1.

§ 62S. Assignment of state minor wards to hospital; approval

No state minor wards shall be assigned to the said hospital until the commissioner, with the approval of the governor and council, finds that sufficient new building accommodations have been constructed to provide for the number thus to be assigned.

Added by St.1954, c. 508, § 1.

STATE HOSPITALS

§ 63. Supervision and control by commissioner

The commissioner shall have general supervision and control of the Rutland hospital, the Lakeville hospital, and the Western Massachusetts hospital and shall see that the affairs of such hospitals are conducted according to law, and to the by-laws and regulations established by the council in respect thereto.

Amended by St.1962, c. 546, §§ 1, 2; St.1962, c. 598, § 3; St.1963, c. 517, § 2.

§ 63A. Admissions to hospital

Subject to such rules and regulations as the department may provide, the superintendent of any hospital administered by the department shall be authorized to admit to any such hospital any person, including any person who is mentally ill, mentally retarded or suffering from any other mental disability, providing the admitting hospital is suitable for the care and treatment of such person.

Added by St.1975, c. 752, § 3.

§ 64. Annual inventory; report; audit

The commissioner shall annually cause to be made an accurate inventory of the stock and supplies on hand and the amount and value thereof at the end of the fiscal year at each hospital under the department; shall make a full and detailed annual report of the condition of each such hospital, and all its affairs, with a copy of the inventory required herein; shall receive and audit the annual report of the treasurer of each hospital, and shall deposit the same, with said annual report, with the state secretary.

Amended by St.1962, c. 546, § 3; St.1963, c. 517, § 3.

§ 65. Repealed by St.1963, c. 517, § 4

§ 65A. Admission to Lakeville hospital

The department may admit to the Lakeville hospital persons suffering from extra-pulmonary tuberculosis, persons crippled by poliomyelitis (infantile paralysis), arthritis or muscular dystrophy and other similar diseases, aging persons, crippled children as defined in the regulations of the department, and persons with chronic diseases; provided, that preference shall be given to citizens of the commonwealth.

Amended by St.1936, c. 346, § 1; St.1941, c. 506; St.1948, c. 412; St. 1952, c. 492; St.1953, c. 383; St.1954, c. 538, § 2; St.1955, c. 220; St. 1957, c. 458; St.1963, c. 517, § 5.

§ 65B. Repealed by St.1962, c. 598, § 4

§ 65C. Patients' funds; deposit

The superintendent of any institution under the supervision and control of the department may deposit in any bank or trust company within the commonwealth or on paid-up shares and accounts of and in co-operative banks, funds belonging to individual patients and funds deposited by their relatives or friends to be used for their benefit, or may use said funds to purchase share accounts of a federal savings and loan association located in the commonwealth, in an account entitled "Patients' Funds", or the superintendent may, whenever he deems it desirable, deposit such funds in such banks in separate accounts as trustee or use said funds to purchase share accounts of a federal savings and loan association located in the commonwealth, as trustee, in each instance, for the patient.

Added by St.1959, c. 131.

§ 65D. Patients' funds; disposition of unclaimed deposits

So much of any funds known as "Patients' Funds" as represents monies belonging to, or deposited for the benefit of, former patients of any such institution, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent thereof to the state treasurer to be held subject to be paid to the person establishing a lawful right thereto, with interest at the rate of three per cent per annum from the time when it was so paid to the state treasurer to the time when it is paid by him to such person; provided, that so much of any monies so paid to the state treasurer as may be necessary to reimburse the institution for any sum due for the support of the person by whom or for whose benefit such money was originally deposited shall be credited to said trustees for that purpose. After six years from the date when any such monies were paid to the state treasurer the same or any balance thereof then remaining in his hands may be used as a part of the ordinary revenue of the commonwealth. Any person may, however, establish his claim after the expiration of the six years above mentioned, and any claim so established shall be paid from the ordinary revenue of the commonwealth. Any person claiming a right to money deposited with the state treasurer under this section may establish the same by a petition to the probate court; provided, that in cases where claims amount to less than fifty dollars, the claims may be presented to the comptroller, who shall examine the same and allow and certify for payment such as may be proved to his satisfaction.

Added by St.1959, c. 131.

§§ 66, 66A. Repealed by St.1961, c. 608, § 1

§ 67. Gifts or bequests

The department may take and hold in trust gifts or bequests for its own use or for the use of any hospital under its charge and shall succeed to and retain the rights, powers and duties formerly held or acquired by the trustees of hospitals for consumptives.

Amended by St.1956, c. 345; St.1963, c. 517, § 6.

CARE OF CERTAIN INFANTS PREMATURELY BORN

§ 67A. Infants prematurely born; notification

If an infant weighing five and one half pounds or less at birth is born in a hospital, the superintendent or other person in charge of such hospital shall file immediately in the case of such an infant born to an unwed mother with the state department of public health, and in the case of any other such infant with the board of health of the town in which the mother of such infant resides, a written report stating the name and location of the hospital, name and address of the parents and the date of delivery, and the sex and color of child.

If an infant weighing five and one half pounds or less at birth is born in a place other than a hospital, the physician having charge of the birth of such infant shall as soon as possible after the birth occurs, by telephone, if possible, notify in the case of such an infant born to an unwed mother the state department of public health, and in the case of any other such infant the board of health of the town in which the mother resides, stating the name of the parents and the address where the infant was born. In addition thereto, such physician shall, within twenty-four hours after such birth, file a written report with said department or said board, as the case may be, in such form and containing such information as the state department of public health shall prescribe.

Added by St.1937, c. 322. Amended by St.1939, c. 246, § 1; St.1949, c. 601, § 1; St.1965, c. 695, § 1.

§ 67B. Transportation of infant to hospital

Upon request of the attending physician, such board of health or its duly authorized representative, upon receiving the notification referred to in section sixty-seven A, shall forthwith provide for suitable transportation of such infant to a hospital equipped to care for prematurely born infants, unless other provision for such transportation shall have been made.

Added by St.1937, c. 332. Amended by St.1949, c. 601, § 2.

§ 67C. Liability for charges for care of infants prematurely born; reimbursement by commonwealth

Expenses for the care and hospitalization of an infant weighing five pounds or less at birth shall be paid by the parents or guardian or any person bound by law to maintain such infant, if he or they are able to pay. If he or they are unable to pay, such expenses, in accordance with rates established by the rate setting commission under chapter six A, shall in the case of such an infant born to an unwed mother be paid by the commonwealth, subject to notice as hereinafter provided, and in the case of any other such infant by the board of health of the town wherein the mother of such infant resides, subject to notice and reimbursement as hereinafter provided. No payments shall be made by the commonwealth or by a town for such expenses incurred more than thirty days prior to the receipt by the department or by such board of health of a written notice or a telephone request, confirmed in writing, from the superintendent or other person in charge of such hospital. Any payments made hereunder by the commonwealth or by the town may be recovered in contract from the parent, guardian or other person bound by law to maintain such infant, if such person is able to pay.

The commonwealth shall reimburse the town wherein the mother resides for one half of all expenses incurred by such town under this section.

Notwithstanding any other provision of this section, the department and boards of health may refer persons eligible under Medicaid for payment of hospital care for premature infants to the appropriate agency for such assistance, and may accept such payments for the care and hospitalization of such infants.

Added by St.1937, c. 332. Amended by St.1939, c. 246, § 2; St.1945, c. 535; St.1949, c. 601, § 3; St.1955, c. 753; St.1961, c. 54; St.1963, c. 573, § 1; St.1965, c. 695, § 2; St.1968, c. 492, § 5; St.1968, c. 559; St.1973, c. 1229, § 4B.

§ 67D. Charges for care of infant as public relief

Sums paid by any town as provided in sections sixty-seven B and sixty-seven C shall not be deemed to have been paid as public relief, and no person shall be deemed to be in receipt of public relief because of his inability to pay such sums.

Added by St.1937, c. 332. Amended by St.1963, c. 573, § 2.

§ 67E. Children born with congenital deformities or birth injuries; reports

Within ten days after the date of birth in the commonwealth of any child with a congenital deformity or a birth injury which may lead to an incapacity or disability, the hospital wherein such birth occurred shall report such congenital deformity or injury to the department on a form to be furnished by said department. The contents of such report shall be solely for the use of the department and such report shall not be open to public inspection or constitute a public record.

Added by St.1963, c. 22, § 3.

§ 67F. Children with hearing impairments; distribution of literature; diagnostic evaluation

Within ten days after the date of birth in the commonwealth of any child, the hospital wherein such birth occurred shall provide the parents or legal guardians of the child with literature describing those conditions which cause certain children to be placed in a high risk category for hearing impairment. Such literature shall urge the parents to discuss such high risk factors with their physicians in order to make a decision as to whether or not the infant may fall into such a high risk category as defined in section sixty-seven H. Such literature shall be furnished to hospitals by the department.

The department shall offer the parents or legal guardians of those children who may fall into such high risk category complete diagnostic evaluation at hospital centers approved by it. Such centers shall maintain suitable otological, audiological, pediatric and neurological support in order to receive such approval, and shall test each child referred thereto in accordance with specific conditions and tables established by the department. Such diagnostic examinations shall, upon request, be given to such children every six months from birth up to age two and at necessary intervals thereafter, at a cost to be borne entirely by the commonwealth.

Added by St.1971, c. 1095.

§ 67G. Audiometric testing of children; costs

Every person in control of a child who has reached age four shall cause such child to be given a complete pure tone test using conventional audiometric tests at such public schools and by such pediatric audiologists or school testers as are approved and designated by the commissioner. The costs for such examinations shall be borne by the commonwealth. In the event such a child fails such pure tone tests, the tester or pediatric audiologist shall advise the parent or legal guardian to consult the otologist of his choice who is in private practice. If upon examination such otologist recommends further tests, the diagnostic services of the approved hospital centers referred to in section sixty-seven F shall be made available to such children at a cost to be borne by the commonwealth.

Added by St.1971, c. 1095.

§ 67H. Literature on hearing impairments

The literature required by section sixty-seven F shall describe the following high risk conditions:—(1) Before birth (*a*) Family history of deafness as indicated by one or more deaf or hard of hearing children in family; (*b*) Maternal thyroid abnormality; (*c*) Maternal German measles in the first three months of pregnancy; (*d*) Maternal influenza or chicken pox in first three months of pregnancy, and (2) Newborn difficulty (*a*) Mycin drugs administered to infant; (*b*) Multiple abnormalities of infant, from whatever cause.

Added by St.1971, c. 1095.

§ 68. Repealed by St.1924, c. 477, § 4

§ 69. Repealed by St.1931, c. 426, § 14

PONDVILLE HOSPITAL

§§ 69A to 69D. Repealed by St.1957, c. 459, § 1

LEMUEL SHATTUCK AND OTHER HOSPITALS

§ 69E. Inpatient and outpatient services; diagnostic evaluation and treatment center; admissions policy

The commissioner shall have general supervision and control of the Lemuel Shattuck hospital, the Rutland hospital, the Lakeville hospital, the Pondville hospital, and the Western Massachusetts hospital. Subject to appropriation and subject to the provisions of sections twenty-five B to twenty-five G, inclusive, the department shall be authorized to establish at these hospitals any inpatient or outpatient health services, including but not limited to medical, surgical, restorative, rehabilitative or chronic services, mental health and mental retardation services, extended care services, dental services, rehabilitative therapy services, family planning services, services for treatment of alcoholism and drug addiction, skilled nursing care services, intermediate care facility services, and residency care services. Subject to appropriation, the commissioner shall establish a diagnostic evaluation and treatment center for emphysema which is to include professional education and training at the Lemuel Shattuck hospital.

The department may admit patients to any of the services provided at the above hospitals subject to such rules and regulations as the department may prescribe; provided, however, that preference shall be given to residents of the commonwealth. Any such patient shall be discharged from said hospital either upon his own request or upon determination of the department but not otherwise.

Added by St.1954, c. 552. Amended by St.1957, c. 459, § 2; St.1958, c. 357; St.1959, c. 494; St.1962, c. 546, §§ 1, 5; St.1963, c. 517, § 7; St.1973, c. 1167; St.1975, c. 572, § 4.

§ 69F. Notice of admission of needy person

Notice of admission of a needy person shall be given within ten days to the department of public welfare.

Added by St.1954, c. 522. Amended by St.1974, c. 260, § 6.

§ 69G. Effect of notice of admission of needy person

In the case of a needy person not already in receipt of public assistance, the notice of admission shall constitute an application on behalf of the patient. Upon receipt of such application, the department of public welfare shall determine his eligibility for assistance, and if he is found eligible, he shall be granted the type of assistance for which he qualifies, from the date of the notice or application.

Added by St.1954, c. 522. Amended by St.1974, c. 260, § 7.

§ 69H. Charges for support; rate

The charges for the support of persons receiving care in said hospitals shall be at the rate determined by the rate setting commission established under chapter six A.

Added by St.1954, c. 522. Amended by St.1957, c. 459, § 3; St.1962, c. 546, § 6; St.1968, c. 492, § 6; St.1973, c. 1229, § 4C.

§ 69*I*. Liability for charges for support; assessment; proceedings; written statements

A person, his executor, or administrator, shall be liable in contract for such charges except that persons in receipt of public assistance shall have their responsibility for payment of such charges fixed in accordance with the provisions of the particular category of assistance under which they are aided. Persons or kindred bound by law to support such needy persons, not eligible for public assistance, shall be assessed in accordance with a schedule approved by the department. In all proceedings under this section, the sworn written statement of a person that he is the superintendent of the hospital or that he keeps or has custody of records relating to inmates thereof, and that a person has been a duly admitted patient therein during a stated period at a stated charge, and that said charge has not been paid in whole or in part, and the sworn written statement of an official of the hospital or department that notice of admission of the said patient was given on a stated date to the department of public welfare, that the charges for support of said patient were determined pursuant to the provisions of section sixty-nine H, and that no satisfactory security was given for his support, shall be prima facie evidence of the said facts.

Added by St.1954, c. 522. Amended by St.1957, c. 459, § 4; St.1962, c. 546, § 7; St.1974, c. 260, § 8.

§ 69J. Operation of concession

The department is authorized to make contracts with private persons or corporations for the operation of concessions in institutions under its charge.

Added by St.1956, c. 497. Amended by St.1958, c. 268.

HOSPITALS

§ 70. Records of hospitals or clinics; custody; inspection; copies; fees

Hospitals or clinics licensed by the department of public health or supported in whole or in part by the commonwealth, shall keep records of the treatment of the cases under their care including the medical history and nurses' notes. Such records may be made in handwriting, or in print, or by typewriting, or by the photographic or microphotographic process, or any combination of the same. Whenever preexisting records shall have been photographed or microphotographed, and the photographs or microphotographs shall have been duly indexed and filed, such licensee upon notifying in writing the supervisor of public records referred to in chapter sixty-six may destroy the original records so photographed or microphotographed, and such photographs or microphotographs shall have the same force or effect as the original records from which they were made. Such records shall be in the custody of the licensee. Section ten of chapter sixty-six shall not apply to such records; provided, that such records and similar records kept by the licensee, except a hospital or clinic under the control of the department of mental health, may be inspected by the patient to whom they relate or by his attorney upon delivery of a written authorization from said patient, and a copy shall be furnished upon his request and a payment of a reasonable fee; and provided, further, that upon proper judicial order, whether in connection with pending judicial proceedings or otherwise, or, except in the case of records of hospitals under the control of the department of mental helath, upon order of the head of the state department which issues the license or of the head of the state department having jurisdiction or control of such licensee, and in compliance with the terms of said order, and, in the case of a hospital or clinic under the control of the department of mental health, when the commissioner of mental health determines that a disclosure would be in the best interest of a patient as provided in the rules and regulations promulgated by the commissioner, such records may be inspected and copies furnished on payment of a reasonable fee. Any such record or any part or portion thereof may be destroyed thirty years after the discharge or the final treatment therein of the patient to whom it relates.

In the event of the transfer of ownership of a hospital, an institution for unwed mothers or a clinic, all medical records of the same shall be maintained by the new owner as if there were no change in ownership.

Amended by St.1941, c. 194, § 5; St.1941, c. 389, § 1; St.1945, c. 291; St.1956, c. 203; St.1957, c. 604; St.1963, c. 23; St.1964, c. 653; St. 1967, c. 891, § 7; St.1970, c. 357; St.1970, c. 614; St.1975, c. 210.

§ 70A. Hospital lien; creation; priority of liens; application

Any person and any city or town maintaining a hospital licensed under the provisions of section fifty-one, any hospital located in the commonwealth and operated by the United States Veterans Administration, any hospital operated by the commonwealth which furnished medical or other services to any person injured in an accident not covered by the workmen's compensation act shall, subject to the provisions of section seventy B, have a lien for the reasonable and necessary charges of such hospital, not exceeding, however, the amount which would be charged in a ward of such hospital, and any health maintenance organization which has furnished health services, and any hospital, medical, or dental service corporation which has provided benefits for covered services furnished to a person injured in such an accident shall, subject to the provisions of section seventy B, have a lien for such benefits, upon the net amount payable to such injured person, his heirs or legal representative out of the total amount of any recovery or sum had or collected or to be collected, whether by judgment or by settlement or compromise, from another person as damages on account of such injuries. The lien of any attorney shall have precedence over the lien created under this section. The provisions of this section shall not apply to any such charges incurred subsequent to any such judgment, settlement or compromise.

Added by St.1959, c. 624, § 1. Amended by St.1961, c. 161; St.1967, c. 891, § 8; St.1978, c. 133, § 1.

§ 70B. Notice of lien

Such lien shall take effect if, prior to any such judgment, settlement or compromise, a written notice containing the name and address of the injured person, the date of the accident, the name and location of the provider of hospital, medical or dental services, the name of the person alleged to be liable to the injured person for the injuries received and, if applicable, the name and address of the health maintenance organization, or the hospital, medical, or dental service corporation, shall be mailed by the hospital, health maintenance organization, medical or dental service corporation, certified mail, return receipt requested, to such injured person, to his attorney, to the person alleged to be liable to such injured person for the injuries sustained and to any insurance carrier which has insured such person against liability.

Added by St.1959, c. 624, § 1. Amended by St.1978, c. 133, § 2.

§ 70C. Settlement disregarding hospital lien; effect; limitation of action

Any person who pays over any money upon which there is a lien as provided in section seventy A of which he has received notice as provided in section seventy B to any such injured person, his attorney or his heirs or legal representatives shall be liable to the person or the city or town having such lien for the amount thereof, not exceeding, however, said net amount paid to such injured person, his heirs or legal representatives. Any action under this section shall be commenced within one year after the date of such payment.

Added by St.1959, c. 624, § 1.

§ 70D. Itemized statement of charges; effect of failure to furnish

Upon receipt of a written request mailed by certified mail, return receipt requested, from any person notified of such lien in accordance with the provisions of section seventy B, such hospital shall within ten days after receipt of such request furnish such person with a certified itemized statement of all charges of such hospital in reference to such injured person as provided in section seventy A, or if such injured person has not been discharged from said hospital at the time such request is received, then such statement shall be so furnished within ten days after such person has been discharged from said hospital.

If such hospital fails to comply with the provisions of this section, such lien shall be dissolved and no person shall be held liable under the provisions of section seventy C for the amount thereof.

Added by St.1959, c. 624, § 1.

§ 70E. Rights of patients and residents

As used in this section, "Facility" shall mean any hospital, institution for the care of unwed mothers, clinic, infirmary maintained in a town, convalescent or nursing home, rest home, or charitable home for the aged, licensed or subject to licensing by the department; any state hospital operated by the department; any "Facility" as defined in section three of chapter one hundred and eleven B; any private, county or municipal facility, department or ward which is licensed or subject to licensing by the department of mental health pursuant to section twenty-nine of chapter nineteen; any "Facility" as defined in section thirty-eight of chapter one hundred and twenty-three; the Soldiers' Home in Holyoke, and the Soldiers' Home in Massachusetts.

The rights established under this section shall apply to every patient or resident in said facility. Every patient or resident shall receive written notice of the rights established herein upon admittance into such facility, except that if the patient is a member of a health maintenance organization and the facility is owned by or controlled by such organization, such notice shall be provided at the time of enrollment in such organization, and also upon admittance to said facility. In addition, such rights shall be conspicuously posted in said facility.

Every such patient or resident of said facility shall have, in addition to any other rights provided by law, the right to freedom of choice in his selection of a facility, or a physician or health service mode, except in the case of emergency medical treatment or as otherwise provided for by contract, or except in the case of a patient or resident of a facility named in section fourteen A of chapter nineteen; provided, however, that the physician, facility, or health service mode is able to accommodate the patient exercising such right of choice.

Every such patient or resident of said facility in which billing for service is applicable to such patient or resident, upon reasonable request, shall receive from a person designated by the facility an itemized bill reflecting laboratory charges, pharmaceutical charges, and third party credits and shall be allowed to examine an explanation of said bill regardless of the source of payment. This information shall also be made available to the patient's attending physician.

Every patient or resident of a facility shall have the right:

(a) upon request, to obtain from the facility in charge of his care the name and specialty, if any, of the physician or other person responsible for his care or the coordination of his care;

(b) to confidentiality of all records and communications to the extent provided by law;

(c) to have all reasonable requests responded to promptly and adequately within the capacity of the facility;

(d) upon request, to obtain an explanation as to the relationship, if any, of the facility to any other health care facility or educational institution insofar as said relationship relates to his care or treatment;

(e) to obtain from a person designated by the facility a copy of any rules or regulations of the facility which apply to his conduct as a patient or resident;

(f) upon request, to receive from a person designated by the facility any information which the facility has available relative to financial assistance and free health care;

(g) upon request, to inspect his medical records and to receive a copy thereof in accordance with section seventy, and the fee for said copy shall be determined by the rate of copying expenses;

(h) to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric, psychological, or other medical care and attention;

(i) to refuse to serve as a research subject and to refuse any care or examination when the primary purpose is educational or informational rather than therapeutic;

(j) to privacy during medical treatment or other rendering of care within the capacity of the facility;

(k) to prompt life saving treatment in an emergency without discrimination on account of economic status or source of payment and without delaying treatment for purposes of prior discussion of the source of payment unless such delay can be imposed without material risk to his health, and this right shall also extend to those persons not already patients or residents of a facility if said facility has a certified emergency care unit;

(l) to informed consent to the extent provided by law; and

(m) upon request to receive a copy of the bill or other statement of charges submitted to any third party by the facility for the care of the patient or resident.

Every patient or resident of a facility shall be provided by the physician in the facility the right:

(a) to informed consent to the extent provided by law;

(b) to privacy during medical treatment or other rendering of care within the capacity of the facility;

(c) to refuse to be examined, observed, or treated by students or any other facility staff without jeopardizing access to psychiatric, psychological or other medical care and attention;

(d) to refuse to serve as a research subject, and to refuse any care or examination when the primary purpose is educational or informational rather than therapeutic;

(e) to prompt life saving treatment in an emergency without discrimination on account of economic status or source of payment and without delaying treatment for purposes of prior discussion of source of payment unless such delay can be imposed without material risk to his health;

(f) upon request, to obtain an explanation as to the relationship, if any, of the physician to any other health care facility or educational institutions insofar as said relationship relates to his care or treatment, and such explanation shall include said physician's ownership or financial interest, if any, in the facility or other health care facilities insofar as said ownership relates to the care or treatment of said patient or resident;

(g) upon request to receive an itemized bill including third party reimbursements paid toward said bill, regardless of the sources of payment; and

(h) in the case of a patient suffering from any form of breast cancer, to complete information on all alternative treatments which are medically viable.

Any person whose rights under this section are violated may bring, in addition to any other action allowed by law or regulation, a civil action under sections sixty B to sixty E, inclusive, of chapter two hundred and thirty-one.

No provision of this section relating to confidentiality of records shall be construed to prevent any third party reimburser from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section relating to confidentiality of records shall be construed to prevent access to any such records in connection with any peer review or utilization review procedures applied and implemented in good faith.

No provision herein shall apply to any institution operated or listed and certified by The First Church of Christ, Scientist, in Boston, or patients whose religious beliefs limit the forms and qualities of treatment to which they may submit.

No provision herein shall be construed as limiting any other right or remedies previously existing at law.

Added by 1979, c. 214. Amended by St.1979, c. 720.

§ 71. Licensing of infirmaries, nursing homes, etc.

The department shall issue for a term of two years, and shall renew for like terms, a license, subject to revocation by it for cause, to any person whom it deems responsible and suitable to establish or maintain an infirmary maintained in a town, a convalescent or nursing home, a rest home, a charitable home for the aged or an intermediate care facility for the mentally retarded, which meets the requirements of the department established in accordance with its rules and regulations; provided, however, that each convalescent or nursing home and each intermediate care facility for the mentally retarded shall be inspected at least once a year.

No original license shall be issued to establish or maintain an intermediate care facility for the mentally retarded, unless there is a determination by the department that there is a need for such facility at the designated location; provided, however, that in the case of a facility previously licensed as an intermediate care facility for the mentally retarded in which there is a change in ownership, no such determination shall be required and in the case of a facility previously licensed as an intermediate care facility for the mentally retarded in which there is a change in location, such determination shall be limited to consideration of the suitability of the new location.

In the case of the transfer of ownership of a convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the department.

The department shall not reduce the number of beds originally approved by it in granting a license for a convalescent or nursing home or rest home upon the transfer of ownership of said convalescent or nursing home or rest home from one licensee to another, unless the public safety requires it.

No original license shall be issued or no license renewed hereunder unless there shall be first submitted to the department by the authorities in charge of the convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded with respect to each building occupied by patients, (1) a certificate of inspection of the egresses, the means of preventing the spread of fire and apparatus for extinguishing fire, issued by an inspector of the division of inspection of the department of public safety, and (2) a certificate of inspection issued by the head of the local fire department certifying compliance with the local ordinances.

Any applicant for an original or renewal license who is aggrieved, on the basis of a written disapproval of a certificate of inspection by the head of the local fire department or by the division of inspection of the department of public safety, may, within thirty days from such disapproval, appeal in writing to the department of public safety. Failure to either approve or disapprove within thirty days, after a written request by an applicant, shall be deemed a disapproval.

If the department of public safety approves the issuance of a certificate of inspection, it shall forthwith be issued by the agency that failed to approve. If said department disapproves, the applicant may appeal therefrom to the superior court. Failure of said department to either approve or disapprove the issuance of a certificate of inspection within thirty days after receipt of an appeal shall be deemed a disapproval. No original license shall be issued or no license shall be renewed by the department of public health until issuance of an approved certificate of inspection, as required in this section.

Nothing in this section or in section seventy-two or seventy-three shall be construed to revoke, supersede or otherwise affect any laws, ordinances, by-laws, rules or regulations relating to building, zoning, registration or maintenance of a convalescent or nursing home, infirmary maintained in a town, rest home or charitable home for the aged.

Upon a written request by an applicant who is aggrieved by the revocation of a license or the refusal of the department to renew a license, the commissioner and the council shall hold a public hearing, after due notice, and thereafter they may modify, affirm or reverse the action of the department; provided, however, that the department may not refuse to renew and may not revoke the license of a convalescent or nursing home, rest home, charitable home for the aged or intermediate care facility for the mentally retarded until after a hearing before a hearings officer, and any such applicant so aggrieved shall have all the rights provided in chapter thirty A with respect to adjudicatory proceedings.

In no case shall the revocation of such a license take effect in less than thirty days after written notification by the department to the convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded.

The fee for the issue or renewal of each license in the case of a convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded shall be twenty-five dollars, and the license shall not be transferable or assignable and shall be issued only for the premises named in the application.

For the purposes of this section and sections seventy-two, seventy-two A and seventy-three, a convalescent or nursing home is defined as any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the express or implied purpose of caring for three or more persons admitted thereto for the purpose of nursing or convalescent care. An infirmary maintained in a town is an infirmary which hitherto the department of public welfare has been directed to visit by section seven of chapter one hundred and twenty-one. A rest home is defined as any institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing care incident to old age to three or more persons who are ambulatory and who need supervision. A charitable home for the aged is defined as any institution, however named, conducted for charitable purposes and maintained for the purpose of providing a retirement home for elderly persons and which may provide nursing care within the home for its residents. An intermediate care facility for the mentally retarded is defined as any institution, however named, whether conducted for charity or profit, which is advertised, announced or maintained for the purpose of providing habilitative services and active treatment to mentally retarded persons or persons with related conditions, as defined in regulations promulgated pursuant to Title XIX of the federal Social Security Act (P.L. 89–97); which is not both owned and operated by a state agency; and which makes application to the department for a license for the purpose of participating in the federal program established by said Title XIX. An original license shall mean a license issued to a convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded, not previously licensed or a license issued to an existing convalescent or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded in which there has been a change in ownership or location; provided, however, that an application for a license to establish or maintain a charitable home for the aged by any person licensed hereunder shall be deemed an application for renewal of a license and not an application for an original license.

Nursing institutions licensed by the department of mental health for mental cases shall not be licensed or inspected by the department of public health. The inspections herein provided shall be in addition to any other inspections required by law.

In the case of new construction, or major addition, alteration, or repair with respect to any facility subject to this section, preliminary architectural plans and specifications and final architectural plans and specifications shall be submitted to a qualified person designated by the commissioner. Written approval of the final architectural plans and specifications shall be obtained from said person prior to said new construction, or major addition, alteration, or repair.

Notwithstanding any of the foregoing provisions of this section, no original license for the establishment or maintenance of a convalescent or nursing home shall be issued by the department unless the applicant for such license submits to the department a certificate of an inspector of the division of inspection of the department of public safety that each building to be occupied by patients of such convalescent or nursing home meets the construction standards of the state building code, and is of at least type 1–B fireproof construction; provided, however, that this paragraph shall not apply in the instance of change of ownership of a convalescent or nursing home whose license had not been revoked as of the time of such change of ownership; and provided, further, that a public medical institution as defined under section two of chapter one hundred and eighteen E, which meets the construction standards as defined herein, shall not be denied a license as a nursing home under this section because it was not of new construction and designed for the purpose of operating a convalescent or nursing home at the time of application for a license to operate a nursing home. An intermediate care facility for the mentally retarded shall be required to meet the construction standards established for such facilities by Title XIX of the Social Security Act (P.L. 89–97) and any regulations promulgated pursuant thereto, and by regulations promulgated by the department.

The licensee of every convalescent or nursing home shall file with the department, at the time his license is due for renewal, a sworn statement of the names and addresses of any person with an ownership or control interest in the home or in the real property occupied and used as such home. As used herein, the phrase "person with an ownership or control interest" shall have the definition set forth in 42 USC Sec. 1320a–3 of the Social Security Act and in regulations promulgated hereunder by the department.

The department may, when public necessity and convenience require, or to prevent undue hardship to an applicant or licensee, under such rules and regulations as it may adopt, grant a temporary provisional or probationary license under this section; provided, however, that no such license shall be for a term exceeding one year.

For the purposes of this section "changes in ownership" of a convalescent or nursing home, infirmary, rest home, charitable home for the aged or intermediate care facility for the mentally retarded shall, in the case of a corporation, mean transfer of a majority of the stock thereof, and in all other cases, a transfer of a majority interest therein.

The department shall notify the secretary of elder affairs forthwith of the pendency of any proceeding of any public hearing or of any action to be taken under this section relating to any convalescent or nursing home, rest home, infirmary maintained in a town, or charitable home for the aged. The department shall notify the commissioner of mental health forthwith of the pendency of any proceeding, public hearing or of any action to be taken under this section relating to any intermediate care facility for the mentally retarded.

Amended by St.1941, c. 661, § 1; St.1945, c. 521; St.1945, c. 527; St.1948, c. 618, § 1; St.1952, c. 602, § 9; St.1954, c. 538, § 3; St.1955, c. 662, §§ 7, 8; St.1956, c. 70; St.1957, c. 545, § 1; St.1963, c. 285; St.1963, c. 758; St.1963, c. 783; St.1964, c. 277; St.1964, c. 620, § 2; St.1965, c. 160; St.1965, c. 469; St.1966, c. 614, § 1; St.1966, c. 713, §§ 3, 4; St.1967, c. 891, § 9; St.1968, c. 686; St.1970, c. 881; St.1973, c. 1210, § 18; St.1973, c. 1168, § 22; St.1977, c. 868, § 2; St.1979, c. 571, § 1; St. 1979, c. 773, §§ 1, 2.

§§ 71A, 71B. Repealed by St.1967, c. 891, § 12

§ 72. Classification of convalescent and nursing homes, infirmaries, etc.; rules and regulations; inspections; records of violations

The department shall classify convalescent and nursing homes, infirmaries maintained in towns, rest homes, charitable homes for the aged and intermediate care facilities for the mentally retarded and shall, after a public hearing, promulgate rules and regulations for the conduct of the same. Such rules and regulations for convalescent and nursing homes, infirmaries maintained in a town, rest homes, charitable homes for the aged and intermediate care facilities for the mentally retarded shall include minimum requirements for medical and nursing care, the keeping of proper medical and nursing records, uniform requirements for the handling of patient funds and sanitation. Regulations for intermediate care facilities for the mentally retarded shall also include minimum requirements for social services, psychological services and other services appropriate for the care of mentally retarded and developmentally disabled persons and shall limit the size of intermediate care facilities for the mentaly retarded to not more than fifteen beds. The department in promulgating such rules and regulations for convalescent or nursing homes, rest homes, charitable homes for the aged and intermediate care facilities for the mentally retarded shall consider the ability of such facilities to provide service under rates set under the provisions of section thirty-two of chapter six A. No such rule or regulation shall apply to a convalescent or nursing home, rest home, charitable home for the aged, or intermediate care facility for the mentally retarded licensed at the time of promulgation of such rule or regulation, or a convalescent or nursing home, rest home, charitable home for the aged or intermediate care facility for the mentally retarded being constructed at the time of such promulgation under plans approved by the department, unless such rule or regulation has a direct and material relation to patient diet, cleanliness, nursing care or health of the patient, or to habilitative services and active treatment for mentally retarded persons or persons with related conditions; provided, however, that nothing herein contained shall be interpreted to prevent the department from adopting or interpreting rules and regulations more favorable toward existing convalescent or nursing homes, rest homes, charitable homes for the aged, or intermediate care facilities for the mentally retarded.

The department or its agents and the board of health or its agents of the city or town wherein any portion of such convalescent home or nursing home, infirmary maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded is located may visit and inspect such institution at any time.

Any person making an inspection under authority of this section shall record in writing every violation which he finds of the applicable rules and regulations of the department. Every record of inspection so made shall be treated as a public record except to such extent as the record or a portion thereof is expressly exempt from such treatment under section seven of chapter four, said violations shall be made public at the same time that a written plan of correction is submitted. If a written plan of correction is not submitted within the allowable time, said violations shall be made public at the expiration of the allowable time. Inspections hereunder shall be unannounced and made at such intervals as the department shall specify in its rules and regulations, but at least twice per annum. A visit made to a facility for the purpose of providing consultation shall not be considered to be an inspection.

Amended by St.1941, c. 661, § 1; St.1948, c. 618, § 1; St.1952, c. 602, § 9; St.1956, c. 439; St.1957, c. 545, § 2; St.1966, c. 614, § 2; St.1966, c. 713, § 5; St.1967, c. 891, § 10; St.1973, c. 1229, § 4*O*; St.1975, c. 877, § 1; St.1979, c. 571, § 2.

§§ 72A, 72B. Repealed by St.1967, c. 891, § 12

§ 72C. Convalescent or nursing homes; lighting and ventilation

All convalescent or nursing homes shall be provided throughout with electric lighting, and shall have an emergency lighting system for the boiler room, exits, stairs, patient corridors and nurses' stations, which shall be maintained in proper working order and kept available for use when required, and an emergency generator or battery with a capacity sufficient to supply the emergency lighting system for a period of at least one and one half hours, and for such further period as may be determined by rule or regulation of the department. Lighting of not less than five foot candles shall be provided during the night in all corridors and toilets, and lighting of not less than one foot candle shall be provided during the night in patients' rooms. All rooms or other areas used by patients shall, unless lights are kept on therein continuously, have light switches so located as to be within easy reach of wheel chair patients.

The use of candles, kerosene lamps or lanterns or other open flame methods of illumination in a convalescent or nursing home is prohibited.

All convalescent or nursing homes shall provide each room and space therein which does not have an outside window and which is used by patients or personnel of such home with forced or other ventilation sufficient to change the air therein at least once in six minutes.

The department shall make such rules and regulations as may be necessary to carry out the provisions of this section, and shall establish standards of lighting for convalescent or nursing homes, said standards to be in accordance with the lighting levels of the Illuminating Engineering Society.

Added by St.1963, c. 730, § 1. Amended by St.1964, c. 602.

§ 72D. Long-term care facilities; telephone service; regulations

All long-term care facilities licensed to care for any number of persons shall provide telephone service for the use of the residents therein. The department shall promulgate regulations which shall specify such phone service.

Added by St.1967, c. 48. Amended by St.1975, c. 122.

§ 72E. Convalescent and nursing homes; notice of violations; plan of correction; penalties; enforcement

The department shall, after every inspection by its agent made under authority of section seventy-two, give the licensee of the inspected facility notice in writing of every violation of the applicable rules and regulations of the department found upon said inspection. The department in such notice shall specify a reasonable time, not more than sixty days after receipt thereof, by which time the licensee shall remedy or correct each violation cited therein; provided, that, in the case of any violation which in the opinion of the department is not capable of correction within sixty days, the department shall require only that the licensee submit a written plan for correction of the violation in a reasonable manner. The department may modify any nonconforming plan upon notice in writing to the licensee. Failure to remedy or correct a cited violation by the date specified in a written notice hereunder or failure to remedy or correct a cited violation by the date specified in a plan for correction as accepted or modified by the department, as the case may be, shall be cause for license revocation or such civil fine as may be imposed upon the licensee after complaint brought by the department under section seventy-three, unless the licensee shall demonstrate to the satisfaction of the department or the court, as the case may be, that such failure was not due to any neglect of his duty and occurred despite his attempt in good faith to make correction by the specified time. The department may pursue either remedy or both or such other sanction as the department may impose administratively upon the licensee under section seventy-one.

Nothing in this section shall be construed to prohibit the department from enforcing a rule or regulation, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the department, the violation of such rule or regulation jeopardizes the health or safety of patients or the public or seriously limits the capacity of facility to provide adequate care, or where the violation of such rule or regulation is the second or subsequent such violation occurring during a period of twelve full months.

Added by St.1975, c. 877, § 2.

§ 73. Penalties

Whoever advertises, announces, establishes or maintains, or is concerned in establishing or maintaining, a convalescent or nursing home, infirmary maintained in a town, a rest home, charitable home for the aged or intermediate care facility for the mentally retarded, or is engaged in any such business, without a license granted under section seventy-one, or whoever being licensed under said section violates any provision of sections seventy-one to seventy-three, inclusive, shall for a first offense be punished by a fine of not more than five hundred dollars, and for a subsequent offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years.

Whoever violates any rule or regulation made under sections seventy-one, seventy-two and seventy-two C shall be punished by such fine, not to exceed fifty dollars, as the department may establish. If any person violates any such rule or regulation by allowing a condition to exist which may be corrected or remedied, the department shall order him, in writing, to correct or remedy such condition, and if such person fails or refuses to comply with such order, each day during which such failure or refusal to comply continues shall constitute a separate offense.

Amended by St.1941, c. 661, § 1; St.1948, c. 618, § 1; St.1952, c. 602, § 9; St.1957, c. 545, § 4; St.1963, c. 730, § 2; St.1963, c. 762; St.1966, c. 614, § 4; St.1967, c. 891, § 11; St.1979, c. 571, § 3.

§ 73A. Facilities operated by First Church of Christ, Scientist in Boston

Nothing in this chapter or in any rule or regulation adopted pursuant thereto, shall be construed to authorize or require any facility which is operated, or listed and certified by The First Church of Christ, Scientist, in Boston, Massachusetts, to be licensed or inspected except under laws, rules or regulations pertaining to sanitation, fire, safety, and building and construction codes; nor shall any guests, patients, residents or personnel thereof be subjected to any medical supervision, regulation or control in connection with the operation of any such facility.

Added by St.1967, c. 891, § 11A.

§ 73B. Facilities operated by Roman Catholic Church

Nothing in this chapter or in any rule or regulation adopted pursuant thereto, shall be construed to authorize or require any facility which is operated for only those duly ordained priests, or for the members of the religious orders of the Roman Catholic Church in their own locations, buildings, residences or headquarters to provide care, shelter, treatment and medical assistance for any of the said duly ordained priests or members of the said religious orders, to be licensed or inspected; except under laws, rules or regulations pertaining to sanitation, fire, safety, and building construction codes; nor shall personnel while working at such facility be subjected to any requirements of medical supervision, regulation, or control in connection with the operation of any such facility.

Added by St.1976, c. 400.

§ 74. Appropriation of money for maintenance of free bed in hospital

Any town not maintaining or managing a hospital may annually appropriate a sum not exceeding one thousand dollars, to be paid to a hospital established in such town or in the vicinity thereof, for the establishment and maintenance of a free bed in the hospital for the care and treatment of persons certified by the selectmen to be residents of the town and unable to pay for such care and treatment. This section shall not apply to cities.

Amended by St.1941, c. 72.

§ 75. Unlawful use of buildings for hospitals

Whoever occupies or uses a building for a hospital in a part of a town prohibited by the aldermen or selectmen shall forfeit not more than fifty dollars for every month of such occupancy or use and in like proportion for a shorter time. The supreme judicial or superior court may restrain such occupancy or use.

§ 76. Repealed by St.1961, c. 608, § 1

§ 77. Department; duty to provide care and treatment of tuberculosis patients

The department shall have responsibility for providing hospital care and treatment for all persons resident in the commonwealth suffering from tuberculosis and who need such hospital care. Such care and treatment may be made available in hospitals within the department or under a contract basis in other public or private hospitals or sanatoria licensed for such care under section seventy-one. Contracts for such care may be made by the department under such arrangements as are determined reasonable and adequate by the department except in the case of county hospitals where contracts shall be made in accord with section seventy-eight.

Added by St.1961, c. 608, § 2.

§ 78. Utilization of county institutions; contracts; notice of discontinuance; payments; regulations

Where county institutions are utilized for providing such care and treatment, the department is authorized to enter into a contract with the county commissioners of the respective counties upon terms satisfactory to the contracting parties under which the county institutions will admit tuberculous patients and give them care and treatment in compliance with the terms of the contract and the regulations of the department in regard thereto. Such contracts shall be made for periods of not longer than two years and may be renewed upon such terms as are satisfactory to the parties. Should the department determine that a particular county institution will no longer be utilized for such tuberculosis care and treatment, it must give written notice of such intention to the county commissioners at least one year in advance of such discontinuance. If such notice is given and would take effect after the expiration of an existing contract, the terms of the existing contract shall remain in effect until the end of the notice period unless a new contract is entered into by the parties. Under the terms of contracts entered into under this section the department shall pay the institutions so utilized for all general health supplies, care, services and accommodations furnished each patient under the contract the rate or rates established by the rate setting commission under chapter six A.

The department is hereby authorized to adopt regulations concerning the care and treatment of tuberculous patients in hospitals under such contract arrangements. If a hospital or sanatorium is not in compliance with these regulations the department may refuse to utilize it for such contract care.

Added by St.1961, c. 608, § 2. Amended by St.1968, c. 492, § 7; St.1973, c. 1229, § 4D.

§ 78A. Hospital care of persons suffering from chronic diseases; admission; cost

The trustees of a county tuberculosis hospital may admit as patients in said hospital persons who are suffering from chronic disease; provided, that sufficient beds are at all times available for persons with tuberculosis who are eligible for admission to said hospital; and provided, further, that before the trustees admit any such chronic disease patients, said hospital is inspected by the department, is duly licensed under section seventy-one, and otherwise complies with sections seventy-two and seventy-three. Such trustees shall promulgate rules and regulations concerning the admission of such chronic disease patients as well as the method of reimbursement and the charges for their care and treatment, notwithstanding any contrary provision of this chapter. The charges to the general public for all general health supplies, care, services and accommodations shall be the rate or rates established by the rate setting commission under chapter six A. Such rules and regulations shall be approved by the department before taking effect.

Added by St.1959, c. 529. Amended by St.1968, c. 492, § 8; St.1973, c. 1229, § 4E.

§ 79. Admissions, transfers and discharges of tuberculous patients; supervision; rates of charges

The department shall have supervision and control of all admissions, transfers, and discharges of tuberculous patients in hospitals within the department or in other hospitals under contract with the department under sections seventy-seven and seventy-eight. The department may adopt regulations concerning such admissions, transfers, and discharges as it deems necessary. The rate or rates for general health supplies, care, services and accommodations to be paid hospitals caring for tuberculosis patients under contract with the department shall be those established by the rate setting commission under chapter six A. No such payment shall be made with respect to any patient not approved for admission by the department. In the case of hospitals under such contracts patients may be admitted who are reasonably suspected of having tuberculosis, but a final diagnosis must be made within sixty days of admission or such longer period as specifically authorized in writing by the department.

Added by St.1961, c. 608, § 2. Amended by St.1968, c. 492, § 9; St.1973, c. 1229, § 4F.

§ 80. Payments for care by cities, towns or able patients; definitions; classifications; appeals

Each city and town shall pay to the commonwealth as its share of the cost of providing general health supplies, care, services and accommodations for any tuberculosis patient resident in such city or town hospitalized under sections seventy-eight and seventy-nine of this chapter a sum equal to one half the reasonable cost as established by the rate setting commission under chapter six A. If a patient is able to pay or if a third party payor is responsible, the department shall collect from the patient or the payor such rates as are established by the rate setting commission. Fifty per cent of the amount so received on account of any patient shall be credited against the payment charged to a city or town on account of such patient as authorized in this section.

For the purposes of this section, the term "resident" means any person having his principal living quarters in such city or town and having no present intention to move to another city or town, or, in the case of a person who is an inmate or patient in an institution, in the city or town in which he last maintained a residence outside of an institution; provided, however, that any tuberculous patient determined to be a chronically non-resident person and a special problem for tuberculosis disease control shall not be charged as a resident of any city or town, and shall be the financial responsibility of the state. For the purposes of this section an "institution" shall include any sanatorium, hospital, rest home, convalescent or nursing home, for the operation of which a license is required by law; any facility conducted by an agency incorporated under chapter one hundred and eighty; and any facility operated by municipal, county, state and federal governments. For purposes of this section the term "chronically nonresident" means a person who evidences by his past conduct an inability or unwillingness to establish and maintain a residency with any degree of permanency and whose instability and general living standards in exposing himself and others to infection makes him a special problem for tuberculosis disease control in the commonwealth. If a city or town requests that a patient be classified as chronically non-resident as indicated in this section, the division of sanitoria and tuberculosis may so classify him. If on such a request, the division does not agree to so classify the patient, the city or town may appeal this decision to a three-member board made up as follows: The public health council shall appoint the members of the board who shall serve without compensation. In the first appointments, one member shall be appointed for three years, one for two, and one for one year with all appointments thereafter being for three years. One member of the board shall be a medical director of a municipal health department, one member shall be a non-medical public health administrator or agent of a municipal health department, and one member shall be a person experienced in social work on a municipal or state level. On any such appeal the board shall hold a hearing and may affirm or reverse such decision. The decision of the board shall be final.

Patients who are receiving or are eligible to receive public assistance shall have their responsibility to pay such charges to their city or town of residence fixed in accordance with the provisions of the particular category of public assistance applicable to them.

Added by St.1961, c. 608, § 2. Amended by St.1965, c. 362; St.1968, c. 492, § 10; St.1973, c. 1229, § 4G.

§ 81. Programs of control and eradication of tuberculosis; responsibility

The department shall have responsibility for conducting programs aimed at controlling and eradicating tuberculosis in the commonwealth. It may establish, foster, and give such aid and assistance as it deems necessary for the establishment and maintenance of outpatient and diagnostic facilities for tuberculosis within tuberculosis hospitals, in other institutions, or in collaboration with local boards of health. It shall provide co-ordination and consultation to local boards of health in gathering and disseminating information on a state-wide basis regarding the prevalence of tuberculosis in the commonwealth.

Added by St.1961, c. 608, § 2.

§ 81A. Use of intradermal tuberculin tests to show freedom from tuberculosis

No ordinance, by-law, rule or regulation of a board of health or the requirements of any public or private institution, school or college shall be enacted, promulgated, or continued in effect which would require a chest x-ray examination to show freedom from tuberculosis in a communicable form, unless the recipient of such x-ray is known to be turberculin positive. Any report required by such ordinance, by-law, rule or regulation showing freedom from tuberculosis in a communicable form shall be based upon a negative intradermal tuberculin test that is administered and interpreted in a manner approved by the commissioner. In the case of a person whose tuberculin test is positive, a statement by a physician, based upon the results of a standard chest x-ray film shall be required, and such other laboratory and clinical examinations as may be necessary for the exclusion of tuberculosis in a communicable form.

Added by St.1977, c. 513.

§ 82. Operation of hospitals by county commissioners or trustees

The county commissioners may operate and maintain a hospital for purposes as indicated in this section. Where the county commissioners or trustees of such hospital determine that they will provide care and treatment for tuberculous patients and they enter into a contract with the department for such care under section seventy-eight they may so operate such a hospital or portion of a hospital under the terms of such contract and the provisions of this chapter. Where a county has maintained a tuberculosis hospital or sanitorium and such institution is not to be included in the contractual arrangements for care of tuberculous patients under section seventy-eight, or where, after the passage of time, contractual arrangements under section seventy-eight are not continued, the commissioners or trustees may after being licensed under section seventy-one convert such hospital into a chronic disease hospital, or a convalescent or nursing home, or a rest home, or the institution may be discontinued and the property liquidated in accordance with law. The county commissioners or trustees may with the approval of the department adopt such rules and regulations concerning the operation of their institutions as chronic disease hospitals, convalescent or nursing homes, or rest homes as they deem necessary. The county commissioners or trustees shall determine the admission policy of such institutions. The rate or rates to be charged for all general health supplies, care, services and accommodations shall be established by the rate setting commission under chapter six A, provided that such policy shall be approved by the rate setting commission. The county commissioners or trustees may, however, continue to operate out-patient facilities for the tuberculosis as long as such services are deemed by them to be necessary or advisable.

Added by St.1961, c. 608, § 2. Amended by St.1962, c. 769, § 1; St.1965, c. 710, § 1; St.1968, c. 487, § 3; St.1968, c. 492, § 11; St.1973, c. 1229, § 4H.

§ 83. County or municipal tuberculosis institutions; conveyance to commonwealth

Where a county or municipal institution is operating for the care and treatment of tuberculous patients and the county commissioners or officers in charge of the municipal institution determine that it is no longer feasible to continue the institution as a county or municipal responsibility or to liquidate it, the commissioners or other authorized officers may with the approval of the commissioner of public health convey to the commonwealth the institution and so much of the estate on which it is situated as is used for the purposes of the institution and also the personal property owned by the county or municipality and held or used for the purposes of the institution. The commissioner of public health is hereby authorized to accept, subject to appropriation, such conveyance in the name and behalf of the commonwealth if at the time such offer of conveyance is made he determines that it is in the best interests of the commonwealth to accept such conveyance.

Added by St.1961, c. 608, § 2.

§ 83A. Indemnity insurance for officers and employees of hospital

The county commissioners of any county, acting as trustees of a hospital established therein under section eighty-two may effect insurance providing indemnity for or protection to the officers and employees of such hospital against loss by reason of their liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or for damage to property, caused by the operation, within the scope of their official duties or employment, of motor or other vehicles owned by the institution to an amount not exceeding forty thousand dollars on account of the injury to or death of one person, or not exceeding one hundred thousand dollars for any one accident, and not exceeding one thousand dollars on account of damage to property. The expense of such insurance shall be included as a part of the cost of maintenance of such hospital.

Added by St.1961, c. 608, § 2.

§ 83B. Authority to raise and expend money for tuberculosis hospital; borrowing; notes; apportionment of costs

County commissioners in carrying out their responsibilities as trustees of county institutions under section eighty-two shall raise and expend such sums of money for acquiring land and constructing and equipping buildings including out-patient and diagnostic facilities and for the alteration and enlargement of existing buildings, for care, maintenance, and repair of all facilities, and for all other purposes as authorized by the general court, except for such temporary financing as provided in section eighty-five A. They may borrow, on the credit of the county, when so authorized by the general court, the said sums, and issue notes of the county therefor, with such interest as may be fixed under section thirty-nine of chapter thirty-five, payable semi-annually, or without interest, in which case they may sell such notes at such discount as they deem proper. The notes shall be signed by the county treasurer and countersigned by the county commissioners. The county may sell the said securities, at public or private sale, on terms and conditions deemed proper, but the proceeds shall be used only for the purposes for which such securities are issued. Said notes may be renewed from time to time without specific authorization from the general court until all the cities and towns liable have paid to the county treasurer the amounts assessed against them. Any amount of interest paid or due on said notes and renewals thereof may be similarly borrowed. All reimbursement from cities and towns on such assessments shall be applied to the payment of temporary debt incurred under this section. Such assessments shall be made against the cities and towns in the county in accordance with their valuation used in assessing county taxes and shall be paid in such manner and such installments as the commissioner shall by special order direct. If any city or town shall neglect or refuse to pay its proportion as required by said order, the county commissioners shall, after notice to the city or town and unless sufficient cause is shown to the contrary, issue a warrant against it for the sum which it was ordered to pay, with interest, and the costs of the notice and warrant; and the same shall be collected and paid into the county treasury, to be applied in payment of the expenses aforesaid.

Added by St.1961, c. 608, § 2.

§ 84. Repealed by St.1931, c. 426, § 218

§ 85. Maintenance of county tuberculosis hospitals; apportionment of costs and expenses

The county commissioners shall provide for the maintenance, operation, and repair of institutions under section eighty-two provided that the expenditure of money for the purposes of this section shall be limited to such amounts as may be authorized by the general court. The commissioners shall, immediately after July tenth of each year, apportion the balance of the cost of maintenance, operation and repair of such hospitals, including the interest paid or due on temporary notes issued therefor, for the previous fiscal year, as defined by section sixteen of chapter thirty-five, to the cities and towns in the county in accordance with their evaluation as used in assessing the county taxes, and shall issue their warrants against such cities and towns for the amount for which they are assessed. Any balance of such cost not so assessed for such year by reason of an underestimate by the commissioners shall be assessed for the next subsequent fiscal year and any excess assessed in accordance with the foregoing provision by reason of an over-estimate by them shall be deducted in determining the amount to be assessed for the next subsequent fiscal year. The county may, thirty days after a written demand for payment, recover in contract against any city or town the amount for which it is liable under this section.

Amended by St.1943, c. 414, § 1; St.1943, c. 500, § 1; St.1951, c. 562, § 7; St.1952, c. 270, § 7; St.1961, c. 608, § 3; St.1969, c. 849, § 74; St. 1971, c. 766, § 24; St.1978, c. 143.

§ 85A. Maintenance, operation and repair of hospitals; apportionment; expenditures

To provide such funds as may be necessary to meet the cost of the care, maintenance and repair of a county institution in compliance with section eighty-five, the county commissioners may in any year borrow money on the credit of the county by temporary loans without specific authorization by the general court, and for such purposes the county treasurer may, with the approval of the county commissioners, issue notes of the county therefor, maturing in not more than twelve months from their dates, and may from time to time renew the same, until all the cities and towns liable to assessment under said section eighty-five have paid to the county treasurer the sums so assessed against them for the aforesaid cost for said year. Receipts of such institutions shall be paid to the county treasurer at such times as the county commissioners may determine. Receipts for said year and payments to the county of the assessments made under section eighty-five to meet the aforesaid cost for said year shall be applied to the payment of the cost of maintenance or to the payment of such temporary loans.

Notwithstanding the limitations imposed by section thirty-seven A of chapter thirty-five, expenditures for the cost in any year of the care, maintenance and repair of county institutions under section eighty-five may be made from any cash balance remaining in the treasury of any such institution at the end of the preceding fiscal year resulting from loans issued under the authority of this section.

Amended by St.1932, c. 65; St.1959, c. 223; St.1961, c. 608, § 4.

§§ 85B, 85C. Repealed by St.1961, c. 608, § 1

§ 86. Acquisition of land

Subject to section eighty-four,[1] county commissioners may purchase, lease, or take by eminent domain under chapter seventy-nine, such land, not exceeding five hundred acres, as they may deem necessary or convenient for the purposes set forth in section seventy-eight.

Amended by St.1961, c. 608, § 5.

[1] Repealed by St.1931, c. 426, § 218.

§ 87. County commissioners as trustees of institutions

The county commissioners shall be trustees of the institutions operated under section eighty-two. Such commissioners shall make suitable regulations for the operation of such institutions and shall appoint superintendents and other officers and employees necessary for the proper operation of the institutions. Appointment of superintendents and other physicians to the staff of such institutions shall be subject to the approval of the department.

Amended by St.1945, c. 398, § 1; St.1961, § 608, § 6; St.1968, c. 487, § 4.

§ 87A. Repealed by St.1968, c. 487, § 6

§ 88. Conversion of hospitals into chronic disease hospitals or homes for the aged

Where, at the time this section goes into effect, a city or town is maintaining a tuberculosis hospital and such hospital is not utilized by the commonwealth for the care and treatment of tuberculosis patients under contractual arrangements under section seventy-seven, and where such hospital is deemed by the board or officer in charge as no longer necessary for the care of tuberculous patients, the hospital may after being licensed under section seventy-one be converted into a chronic disease hospital or home for the care and treatment of aging persons, or the institution may be liquidated in accordance with law. The board or officer in charge of such institution may adopt such rules and regulations concerning the operation of the institution as a chronic disease hospital or home for the aging and concerning admission of patients thereto as deemed necessary; provided, however, that the rate or rates in such a chronic disease hospital or home for the aging for all general health supplies, care, services and accommodations shall be established by the rate setting commission under chapter six A.

Amended by St.1943, c. 500, § 2; St.1946, c. 310, § 2; St.1951, c. 562, § 8; St.1952, c. 270, § 8; St.1961, c. 608, § 8; St.1962, c. 769, § 2; St. 1968, c. 492, § 12; St.1973, c. 1229, § 4*I*.

§ 88A. Repealed by St.1951, c. 562, § 9

§§ 88B to 90. Repealed by St.1961, c. 608, § 1

§ 91. Exemptions; size of cities and towns; change; cities and towns to become part of district; proportionate payment of costs

Cities having one hundred thousand or more inhabitants as determined by the last national census, and cities and towns having less than one hundred thousand inhabitants as determined as aforesaid and already possessing and continuing to furnish satisfactory tuberculosis hospital provision, shall be exempt from the provisions of sections seventy-eight to ninety, inclusive; provided, that no city included within a tuberculosis hospital district shall become entitled to such exemption by reason of any change in the number of inhabitants of such city, and provided, further, that each city or town of less than one hundred thousand inhabitants as aforesaid, which on July first, nineteen hundred and twenty-seven or at any time thereafter shall have failed to furnish tuberculosis hospital provision to the satisfaction of the department in a tuberculosis hospital maintained by said city or town or in a building or ward of a hospital set apart by it for its tubercular patients, or in any other public or private facility caring for patients with tuberculosis, shall, upon receipt of written notification from the department of such failure, become and be a part of the district of the tuberculosis hospital for the county or section thereof in which such city or town is situated; and provided, further, that any city or town may, at any time upon application and payment of its proportionate share of the actual construction costs, as hereinafter provided, of said county tuberculosis hospital, if any, become a part of the hospital district of the county or section thereof in which it is situated. Each city or town becoming, by reason of its failure to comply with this section or upon application as aforesaid, a part of a county hospital district shall pay to the district treasurer its proportionate share of the actual construction costs of said county tuberculosis hospital, if any, including land, buildings and equipment, computed as of the date of such failure or such application. In case the city council of such city or the selectmen of such town and the trustees of such county tuberculosis hospital do not agree on the amount of such proportionate share within three months after the receipt by said city or town of written notification from the department of failure as aforesaid or within three months after application as aforesaid, the amount of such share shall be determined by a valuation board consisting of the mayor of the city or the chairman of the board of selectmen of the town, a person to be selected forthwith after the expiration of said three months' period by the county commissioners of the county in which such city or town is situated, and a third person to be selected by the other two. If the representatives of the city or town and the county do not, within thirty days after the selection of the county representative on said board, agree upon a third member thereof, such third member shall, on petition therefor by any party in interest to the supreme judicial court, be appointed by a justice thereof. The decision of a majority of said valuation board shall be final.

Any city or town, not excepting those in excess of one hundred thousand population, which, on June first, nineteen hundred and fifty-four, was meeting the provisions of this section and section ninety-two for the care of tuberculosis patients in a hospital maintained by the city or town, may by contract, with the approval of the department, provide for such hospital care with any other city or town or with any county or with the department or with a private charitable tuberculosis sanatorium or hospital as provided in section seventy-nine, and any such city or town contracting for such care shall be exempt from the payment of construction costs of existing county sanatoria.

Amended by St.1954, c. 538, § 5; St.1955, c. 559, § 1.

§§ 91A, 91B. Repealed by St.1961, c. 608, § 1

§ 91C. Diseases of chest; use of facilities for treatment; rules and regulations

Whenever, in the opinion of the board or officer in charge of a tuberculosis hospital maintained by a city or town, the entire facilities of such hospital are no longer needed for the treatment and care of persons in said city or town suffering from pulmonary tuberculosis, such board or officer may, so long as the department approves, establish and maintain at such hospital a division for the care and treatment of persons suffering from other diseases of the chest; provided, that sufficient beds are at all times available for persons with tuberculosis; and provided, further, that such division is licensed in accordance with sections seventy to seventy-three, inclusive. Subject to the approval of the department, the board or officer in charge of such hospital may, notwithstanding any contrary provisions of this chapter, promulgate rules and regulations for such division, including the charges for care and treatment therein.

Added by St.1959, c. 462.

DANGEROUS DISEASES

§ 92. Construction and maintenance of isolation hospitals; approval

Each city shall, and each town may, and upon request of the department shall, establish and maintain constantly within its limits one or more hospitals for the reception of persons having smallpox, diphtheria, scarlet fever, or other diseases dangerous to the public health except tuberculosis as defined by the department unless there already exists therein a hospital satisfactory to the department for the reception of persons ill with such diseases, or unless some arrangement satisfactory to the department is made for the care of such persons. All such hospitals established and maintained by cities and towns shall be subject to the orders and regulations of the boards of health thereof. Plans for construction of such hospitals shall be approved by the department before they are constructed, and the district health officers shall annually make such examination of said hospitals, and of all other hospitals, sanatoria, asylums, homes, prisons and dispensaries, both public and private, caring for diseases dangerous to the public health, as in the opinion of the department may be necessary, and report as to their condition and needs to those responsible for their management. A city or town which, upon the request of the department, refuses or neglects to establish and maintain such a hospital shall forfeit not more than five hundred dollars; provided, that if, in the opinion of the boards of health of two or more adjoining municipalities, such hospitals can advantageously be established and maintained in common, the authorities of the said cities or towns may, subject to the approval of the department, enter into any agreements deemed necessary to establish and maintain the same.

Amended by St.1955, c. 559, § 2; St.1961, c. 608, § 9.

§ 93. Regulation of persons approaching isolation hospital

Physicians, nurses, attendants, patients and all persons approaching or coming within the limits of such hospitals, and all furniture and other articles used or brought there, shall be subject to the regulations of the board of health.

§ 94. Receiving persons from adjoining towns

The board of health of any town which has established or which may hereafter establish within its limits a hospital for the reception of persons having smallpox or any other disease dangerous to the public health may receive for care and treatment in such hospital persons from an adjoining town who are infected with any of said diseases.

§ 94A. Certification of non-hospitalized persons afflicted with active tuberculosis; examination; transportation; release

(*a*) The board of health of any city or town, or any member thereof, or two physicians licensed to practice medicine in the commonwealth, may certify to the commissioner any non-hospitalized person who (1) is afflicted with active tuberculosis, (2) is unwilling or unable to accept proper medical treatment, and (3) is thereby a serious danger to the public health.

(*b*) On receipt of such certification the commissioner or his agent shall conduct or have conducted an examination of such person, and, if he concurs in the certification shall file a petition in the district court under section ninety-four C for the hospitalization of such person. If, however, such person refuses to submit to examination, the commissioner may order him to be hospitalized immediately at the tuberculosis treatment center, established under section ninety-four D for a fifteen-day observational period.

(*c*) If the commissioner or his agent concurs in the certification of the board of health, and finds that such person is in need of immediate hospitalization for the protection of the public health, he may order him to be hospitalized immediately at the tuberculosis treatment center for a fifteen-day emergency observational period.

(*d*) The commissioner or his agent may call on the police department of the city or town whose board of health certified such person, or the police department of the place where such person is present, to provide the transportation to the tuberculosis treatment center.

(*e*) If the patient is sent to the tuberculosis treatment center under this section, the superintendent thereof shall, at the expiration of fifteen days, either release the patient or file a petition with the district court under section ninety-four C. The patient may be detained at the center pending disposition of the petition.

Added by St.1956, c. 615, § 1. Amended by St.1964, c. 419, § 1.

§ 94B. Detention of patient at sanatorium; petition; transfer to tuberculosis treatment center; release

If any active tuberculosis patient in a municipal, county, state or private sanatorium or hospital indicates his desire to leave the institution against the medical advice of the superintendent or manager of the institution in accord with the accepted medical policy of the institution, and the superintendent or manager determines that to allow his release would be a serious danger to the public health, he may detain the patient, or, if he fears the patient may try to leave the hospital, he may request the local police department to transport the patient immediately to the tuberculosis treatment center established under section ninety-four D.

If the superintendent or manager detains the patient at his own institution, he shall immediately file a petition in the district court under section ninety-four C for the prolonged hospitalization of the patient. The patient may be detained at the institution pending disposition of the petition.

If the patient is transported to the tuberculosis treatment center he shall be detained there no longer than fifteen days, and upon the expiration of that time he shall be released, unless a petition for the prolonged hospitalization of such patient is filed by the superintendent thereof in the district court under section ninety-four C.

Added by St.1956, c. 615, § 1. Amended by St.1964, c. 419, § 2.

§ 94C. Court commitment to tuberculosis treatment center; procedure; notice; hearing

Any justice or associate justice of the district court may commit to the tuberculosis treatment center established under section ninety-four D, for prolonged hospitalization, any person afflicted with active tuberculosis and residing in or present in the jurisdiction of the court, concerning whom a petition has been filed in accordance with sections ninety-four A and ninety-four B.

The procedure for commitment shall be as follows:—

(1) If the petition is filed by the commissioner of public health or his agent under section ninety-four A in a nonemergency situation, the court shall appoint two physicians experienced in the diagnosis, care and treatment of tuberculosis to examine the person and report to the court on his condition and on his willingness and ability to accept proper medical treatment, and to give their opinion on whether or not it would be a serious danger to the public health to allow the person to be unhospitalized. Neither of these physicians shall be on the full-time staff of a state, county or municipal tuberculosis hospital.

The court shall give the person notice of his right to a hearing on the matter of his commitment. If the person does not request a hearing, the judge may order his commitment on the basis of the physicians' reports. If a hearing is requested, the court shall allow the person a reasonable time to prepare his case. The court need not see the person or hear him in open court if it is deemed inadvisable by the physicians because of his contagious condition. If, however, it is determined that the person cannot be present because of his condition, he must be given notice of this fact and of his right to have counsel and witnesses present at the hearing. In the latter case, the court shall appoint legal counsel to represent the person's interests at the hearing if he does not have his own legal counsel.

If the judge finds the person is afflicted with tuberculosis and is unwilling or unable to accept proper medical treatment, and is thereby a serious danger to the public health, the judge shall commit the person to the care and custody of the commissioner, to be cared for and treated at the tuberculosis treatment center.

(2) If the petition is filed by the superintendent of the tuberculosis treatment center under section ninety-four A or ninety-four B,

or under section ninety-four B by the superintendent or manager of another sanatorium or hospital, the judge shall give notice to the patient of his right to a hearing on the matter of his commitment. If a hearing is requested it shall be granted and the commitment procedure and medical examination shall be conducted in compliance with paragraph (1). If no hearing is requested the judge may, on the basis of the petition of the superintendent and on such other evidence as he may require, order the person committed.

Added by St.1956, c. 615, § 1. Amended by St.1964, c. 419, § 3.

§ 94D. Tuberculosis treatment center; establishment; supervision

The department shall establish a tuberculosis treatment center in one of the state hospitals, or may contract with a county, municipal or general hospital for the custody, care, treatment and rehabilitation of patients hospitalized under sections ninety-four A to ninety-four C, inclusive. Such center or hospital shall be equipped with adequate safeguards to prevent the escape of such patients. Such center or hospital shall be under the supervision of its superintendent, subject to the provisions of this chapter, or of any rules or regulations made by the commissioner.

The commissioner may construct facilities similar to said treatment center at any state hospital, and all such facilities, including facilities provided by contract for the same purpose, shall constitute the treatment center, as used in sections ninety-four A to ninety-four C, inclusive. On any hospitalization under said sections, the commissioner may assign the patients to whichever facility he deems best suited to care for them. The commissioner may transfer such patients from one such facility to another if he deems it advisable.

Added by St.1956, c. 615, § 1. Amended by St.1964, c. 419, § 4.

§ 94E. Financial responsibility for treatment of patients; residence

The full financial responsibility for the care and treatment of patients hospitalized at the tuberculosis treatment center shall be on the commonwealth. The placing of such financial responsibility on the commonwealth for the patients shall in no way affect the residence or other matters concerning the family or dependents of the patients.

Added by St.1956, c. 615, § 1. Amended by St.1961, c. 608, § 10; St.1964, c. 419, § 5; St.1974, c. 260, § 9.

§ 94F. Discharge from treatment center; declassification; transfer

Any person hospitalized at the treatment center may be discharged therefrom by the superintendent at any time he determines that it is in the best interest of the patient and of the public health so to do.

The superintendent may also declassify the patient as under the care and custody of this center and transfer him to an open ward at the same hospital, or transfer him to another sanatorium or hospital, state, county, municipal or private, if he deems it in the best interest of the patient and the public health. The admission of the patient to such other institutions shall be in accordance with the requirements of law for admission to such institutions.

Added by St.1956, c. 615, § 1. Amended by St.1964, c. 419, § 6.

§ 94G. Petition for release; order of release

Any person hospitalized at the treatment center may petition the district court which committed him to release him therefrom. Such petition shall not be made until six months after the original court commitment. If such petition is denied, another such petition shall not be filed until six months after the date of denial of a previous petition.

The court may order the person released from the treatment center if it finds such person is no longer affected with active tuberculosis, or is willing and able to accept proper medical treatment, and is thereby no longer a danger to the public health.

Added by St.1956, c. 615, § 1.

§ 94H. Regulations concerning content of certification; minimum standards

The commissioner and the public health council may make regulations concerning the content of the certification made by boards of health and physicians under section ninety-four A, including the definition of, and the methods for determining active tuberculosis. The commissioner and public health council may make regulations concerning the minimum standards for proper medical treatment for active tuberculosis patients cared for outside a hospital, so that such patients will not be a menace to the public health.

Added by St.1956, c. 615, § 1.

§ 95. Powers and duties of boards in cases of infectious diseases

If a disease dangerous to the public health breaks out in a town, or if a person is infected or lately has been infected therewith, the board of health shall immediately provide such hospital or place of reception and such nurses and other assistance and necessaries as is judged best for his accommodation and for the safety of the inhabitants, and the same shall be subject to the regulations of the board. The board may cause any sick or infected person to be removed to such hospital or place, if it can be done without danger to his health; otherwise the house or place in which he remains shall be considered as a hospital, and all persons residing in or in any way connected therewith shall be subject to the regulations of the board, and, if necessary, persons in the neighborhood may be removed. When the board of health of a town shall deem it necessary, in the interest of the public health, to require a resident wage earner to remain within such house or place or otherwise to interfere with the following of his employment, he shall receive from such town during the period of his restraint compensation to the extent of three fourths of his regular wages; provided, that the amount so received shall not exceed two dollars for each working day.

§ 96. Warrants to remove persons infected with dangerous disease

A magistrate authorized to issue warrants may issue a warrant directed to the sheriff of the county or his deputy, or to any constable or police officer, requiring him, under the direction of the board of health, to remove any person infected with a disease dangerous to the public health or who is a carrier of the causative agent thereof, or to take control of convenient houses and lodgings, and to impress into service and use such convenient houses, lodgings, nurses, attendants and other necessaries. The removal authorized by this section may be made to a hospital in any town established for the reception of persons having diseases dangerous to the public health; provided, that the assent of the board of health of the town to which such removal is to be made shall first have been obtained.

Amended by St.1938, c. 265, § 8.

§ 96A. Transportation of person infected with dangerous disease to another town

No town shall transport or permit to be transported to another town any person infected with a disease dangerous to the public health, without first obtaining the assent of the board of health of the town to which the patient is to be transported; but this requirement shall not apply to transportation to a hospital except under section ninety-six.

Added by St.1938, c. 265, § 9.

§ 97. Removal of patient from home where patient cannot be isolated

Sections ninety-five and ninety-six, so far as they confer authority for the removal of patients from their homes, shall apply only to persons residing in boarding houses or hotels, or to two or more families occupying the same dwelling, or in other cases where, in the opinion of the board, the patient cannot properly be isolated.

Amended by St.1938, c. 265, § 10.

§ 98. Permits for removal of infected articles or sick persons

Boards of health may grant permits for the removal of any nuisance, infected articles or sick person within the limits of their towns.

§ 99. Warrant to secure infected articles; application

If upon application of the board it appears to a magistrate authorized to issue warrants that there is just cause to suspect that baggage, clothing or goods found within the town are infected with any disease dangerous to the public health, he shall, by warrant directed to the sheriff or his deputy or to any constable, require him to impress as many men as said magistrate may judge necessary to secure such baggage, clothing or goods, and to post said men as a guard over the house or place containing such articles to prevent persons from removing or coming near the same until due inquiry is made into the circumstances.

§ 100. Warrant to take houses for safe keeping of infected articles

The magistrate may, by the same warrant, require the officers, under the direction of the board, to impress and take up convenient houses or stores for the safe keeping of such articles; and the board may remove them thereto or otherwise detain them until, in its opinion, they are freed from infection.

§ 101. Execution of warrant; breaking open houses

The officers, in executing the warrant, may command aid and may break open any house, shop or other place mentioned in the warrant. Whoever, being commanded by said officers to assist in the execution of the warrant, neglects or refuses so to do shall forfeit not more than ten dollars.

§ 102. Payment of expenses in purifying infected articles

The expense of securing, transporting and purifying such articles as fixed by the board shall be paid by the owners or by the town, as the board may determine. For any article of furniture or wearing apparel ordered destroyed by the board the town may recompense the owner to an amount not exceeding fifty dollars.

§ 103. Compensation for houses and stores impressed

If a sheriff or other officer impresses or takes up any houses, stores, lodging or other necessaries, or impresses men, the town where such persons or property are so impressed shall pay a just compensation to the persons entitled thereto. Compensation for taking or impressing property may be recovered under chapter seventy-nine.

§ 104. Prevention of spread of infection; public notice; removal

If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety. Whoever obstructs the selectmen, board of health or its agent in using such means, or whoever wilfully and without authority removes, obliterates, defaces or handles such public notices which have been posted, shall forfeit not less than ten nor more than one hundred dollars.

Amended by St.1938, c. 265, § 11.

§ 105. Violation of regulations

If a physician or other person who is in any of the hospitals or places of reception mentioned in section ninety-five, or who attends, approaches or is concerned with them, violates a regulation of the board of health relative thereto, he shall forfeit not less than ten nor more than one hundred dollars.

§ 106. Travelers from infected places outside commonwealth; license

The board of health of a town near to or bordering upon an adjoining state may in writing appoint suitable persons, who shall attend at places by which travelers may pass from infected places without the commonwealth, and who may examine such travelers as the board suspects of bringing any infection dangerous to the public health, and, if necessary, restrain them from traveling until licensed thereto by the board of health of the town to which they may come. A traveler coming from an infected place who, without such license, travels within the commonwealth, unless to return by the most direct way to the state whence he came, after he has been cautioned to depart by the persons so appointed, shall forfeit not more than one hundred dollars.

§ 107. Transportation of infected dead bodies; rules and regulations

No person shall convey or cause to be conveyed through or from any town in the commonwealth the body of any person who has died from any disease dangerous to the public health, except in accordance with such rules and regulations as may be made from time to time by the department. No town clerk, or clerk or agent of the board of health, shall give a permit for the removal of such a body until he has received from the board of health of the town where the death occurred a certificate stating the cause of death, and that said body has been prepared so as to preclude danger of contagion or infection by its transportation. The certificate shall be delivered to the agent or person receiving the body. The department shall formulate such rules and regulations pertaining to funerals of all persons dying from any disease dangerous to the public health as it deems necessary to prevent the spread of infection. Whoever violates any provision of this section or any rule or regulation made hereunder shall forfeit not more than twenty-five dollars.

Amended by St.1938, c. 265, § 12.

§ 108. Removal of sick prisoners

If a prisoner in a jail or house of correction has a disease which, in the opinion of the physician of the board of health or of such other physician as it may consult, is dangerous to the safety and health of other prisoners or of the inhabitants of the town, the board shall, in writing, direct his removal to a hospital or other place of safety, there to be provided for and securely kept until its further order. If he recovers from the disease, he shall be returned to his former place of confinement. If the person so removed has been committed by order of court or under judicial process, the order for his removal, or a copy thereof attested by the presiding member of the board, shall be returned by him, with the doings thereon, into the office of the clerk of the court from which the process of commitment was issued. No prisoner so removed shall thereby commit an escape.

§ 109. Notice of householder that person in family or house is infected with dangerous disease

A householder who knows or has cause to believe that a person in his family or house is infected with a disease dangerous to the public health shall forthwith give notice thereof to the board of health of the town where such householder dwells, unless a physician is in attendance. Upon the death, recovery or removal of such person, the householder shall disinfect to the satisfaction of the board such rooms of his house and articles therein as, in the opinion of the board, have been exposed to infection or contagion, but the board may in its discretion, disinfect all such premises as, in its opinion, have been exposed to any disease dangerous to the public health, at the expense of the town, and may employ any proper and competent person to so disinfect. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

Amended by St.1938, c. 265, § 13.

§ 109A. Treatment of infants' eyes at time of birth

The physician, or hospital medical officer registered under section nine of chapter one hundred and twelve, if any, personally attending the birth of a child shall treat his eyes within two hours after birth with a prophylactic remedy furnished or approved by the department. Whoever violates this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1936, c. 115. Amended by St.1943, c. 46; St.1968, c. 358, § 4.

§ 110. Report of diseases of the eyes of infants

If either eye of an infant becomes inflamed, swollen and red, or shows an unnatural discharge within two weeks after birth, the nurse, relative or other attendant having charge of such infant shall report in writing, within six hours thereafter, to the board of health of the town where the infant is, the fact that such inflammation, swelling and redness of the eyes or unnatural discharge exist. On receipt of such report, or of notice of the same symptoms given by a physician, or a hospital medical officer registered under section nine of chapter one hundred and twelve, as provided by the following section, the board of health shall take such immediate action as it may deem necessary, including, so far as may be possible, consultation with an oculist and the employment of a trained nurse, in order that blindness may be prevented. Whoever violates this section shall be punished by a fine of not more than one hundred dollars.

Amended by St.1932, c. 180, § 17.

§ 110A. Tests of newborn children for treatable disorders

The physician attending a newborn child shall cause said child to be subjected to tests for phenylketonuria, cretinism and such other specifically treatable genetic or biochemical disorders which may be determined by testing as specified by the commissioner. The commissioner may convene an advisory committee on newborn screening to assist him in determining which tests are necessary.

The department shall make such rules pertaining to such tests as accepted medical practice shall indicate.

The provisions of this section shall not apply if the parents of such child object thereto on the grounds that such test conflicts with their religious tenets and practices.

Added by St.1963, c. 545. Amended by St.1978, c. 108.

§ 110B. Reyes syndrome treatment or examination; reports

A physician, intern, physician assistant, a public health nurse, or another person who professionally examines or treats a child with reyes syndrome shall report such examination or treatment to the department of public health in accordance with the rules and regulations of the department. Such report shall be made on forms prescribed by the commissioner and shall be submitted as soon as possible after such examination or treatment.

The department shall, subject to appropriation, maintain comprehensive records of all reports submitted pursuant to this section. Such reports shall be confidential and shall be released by the department only upon written request of the subject of such report, or his guardian, executor, attorney, or other person designated by said subject in writing. Such reports and records or information contained therein, may also be released by the department to persons authorized by the commissioner to conduct research studies or to other persons, but no report or record shall be released which allows identification of the subjects of said reports or records. Whoever violates this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1978, c. 395.

§ 111. Notice to board of health that persons infected with dangerous diseases; application of section

If a physician knows or has cause to believe that a person whom he visits is infected with a disease dangerous to the public health, or if either eye of an infant whom or whose mother a physician, or a hospital medical officer registered under section nine of chapter one hundred and twelve, visits, becomes inflamed, swollen and red, or shows an unnatural discharge within two weeks after birth, he shall immediately give written notice thereof, signed by him, to the board of health of the town where the patient is being attended by him. If the board of health which receives such written notice is the board of health of a town other than that wherein the patient dwells, it shall, immediately upon receipt of such notice, send a copy thereof to the board of health of the town wherein the patient dwells; and, in addition thereto, the board of health which receives such written notice, whether or not it is the board of health of the town wherein the patient dwells, shall send a copy thereof to the board of health of the town in which the patient is known to have contracted such disease and to the board of health of each town in which he is known to have exposed any person to such disease. If a physician or such a hospital medical officer refuses or neglects to give the notice required by this section he shall be punished by a fine of not less than fifty nor more than two hundred dollars.

The foregoing provisions of this section and the provisions of section one hundred and nine shall not apply to venereal diseases as defined under section six, except in the case of eye infections in infants under two weeks of age. Any person having a venereal disease shall be reported to local boards of health either directly or through the department in accordance with such special rules and regulations as the department may make, having due regard for the best interests of the public.

Amended by St.1938, c. 265, § 14; St.1948, c. 129, § 2.

§ 111A. Cerebral palsy; reports

If a physician or hospital medical officer registered under section nine of chapter one hundred and twelve knows or has cause to believe that a person whom he is attending is afflicted with cerebral palsy, he shall give written notice thereof to the board of health of the city or town where the patient is being attended. Said board of health shall annually make such report to the department of the notices required under this section as the department by rule or regulation may prescribe. Such notices and such reports shall be solely for use of the boards of health and the department and shall not be open to public inspection or constitute a public record.

Added by St.1963, c. 118.

§ 112. Notice by local board to department

If the board of health of a town has had notice of a case of any disease declared by the department dangerous to the public health therein, it shall within twenty-four hours thereafter give notice thereof to the department, stating the name and the location of the patient so afflicted, and upon request the department shall forthwith certify any such reports to the department of public welfare.

Amended by St.1938, c. 265, § 15.

§ 113. Records of reports of dangerous diseases; notice

Every board of health shall keep a record of all reports received pursuant to sections one hundred and nine to one hundred and eleven, inclusive, containing the name and location of all persons who are infected, their disease, the name of the person reporting the case, the date of such report, and other information required by the department. Such records shall be kept in the manner or upon forms prescribed by the department. The board of health shall forthwith give information to the school committee of all diseases dangerous to the public health so reported to it. Every board of health shall appoint some person, who may or may not be a member of the board, who shall give notice to the department, as provided in the preceding section, of any person infected with a disease dangerous to the public health; and in case of the absence or disability of such appointee, the board of health shall appoint another person to perform this duty during such absence or disability. Such appointments and the acceptance thereof by the persons so appointed shall be placed upon the records of the board. Any person, having accepted such appointment, who wilfully refuses or wilfully neglects or through gross negligence fails to give such notices shall be punished by a fine of not more than fifty dollars.

Amended by St.1938, c. 265, § 16.

§ 114. Forfeiture of claim

A claim of a town against the commonwealth for reasonable expenses incurred by the board of health in making the provision required by law for persons infected with a disease dangerous to the public health shall not be defeated by reason of the failure on the part of the board to give notice of such disease to the department under section one hundred and twelve, if such claim is otherwise a valid claim against the commonwealth.

§ 115. Recovery of expenses

Expenses incurred by a town in the removal of nuisances or for the preservation of the public health, for which any person is liable, may be recovered in contract.

§ 116. Payment of reasonable expenses; chronically nonresident person defined

Reasonable expenses incurred by boards of health or by the commonwealth in making the provision required by law for persons infected with smallpox or other disease dangerous to the public health, other than tuberculosis, shall be paid by such persons, or, if such person is a minor, by his parents, if he or they are able to pay; otherwise, by the town where he has a residence upon the approval of the bill by the board of health of such town or by the department of public health of such town or by the department of public health when such person is determined to be a chronically nonresident person.

For the purposes of this section the term "chronically nonresident person" means a person who evidences by his past conduct an inability or unwillingness to establish and maintain a residency with any degree of permanency and whose instability and general living standards in exposing himself and others to infection makes him a special problem for control in the commonwealth of smallpox or other disease dangerous to the public health.

Amended by St.1943, c. 275, § 1; St.1961, c. 608, § 11; St.1964, c. 339, § 1; St.1967, c. 508.

CHRONIC RHEUMATISM

§ 116A. Hospitalization of persons suffering from chronic rheumatism; rules and regulations

The department, subject to rules and regulations approved by the rate setting commission, may provide for the care and treatment of persons suffering from chronic rheumatism for a period not exceeding six months in case of any one such person, and said department may enter into contracts with one or more existing hospitals within any metropolitan district for the care and treatment of such patients; provided, that not more than twenty-five such patients may be cared for or treated under this section at any one time.

Added by St.1937, c. 393. Amended by St.1968, c. 492, § 13.

VENEREAL DISEASES

§ 117. Establishment and maintenance of clinics for treatment of venereal diseases; examinations; minors

For the purpose of providing treatment for persons suffering from venereal diseases, as defined under section six, and who are unable to pay for private medical care, the department shall, or with the co-operation of local boards of health, hospitals, dispensaries or other agencies may, establish and maintain clinics in such parts of the commonwealth as it may deem most advantageous to the public health, and may otherwise provide treatment for such diseases subject to such rules and regulations as the department may from time to time establish. Cities and towns, separately or jointly, through their boards of health or municipal hospitals, may establish and maintain such clinics. For the purposes of this section, providing treatment shall include providing transportation or the reasonable cost of such transportation to and from the place where treatment is given whenever the patient is not able to pay for such transportation.

For the purposes of this section, physical examination and treatment by a registered physician or surgeon upon the person of a minor who voluntarily appears therefor, shall not constitute an assault or an assault and battery upon said person.

Amended by St.1935, c. 155; St.1937, c. 391; St.1948, c. 129, § 3; St. 1954, c. 44; St.1974, c. 187.

§ 118. Discrimination against treatment of venereal diseases

No discrimination shall be made against the treatment of venereal diseases, as defined under section six, in any general hospital supported by taxation in any city or town where special hospitals, other than hospitals connected with penal institutions, are not provided for the treatment of such diseases at public expense; but any such hospital may establish a separate ward for their treatment.

Amended by St.1933, c. 44; St.1948, c. 129, § 4.

§ 119. Records pertaining to venereal diseases

Hospital, dispensary, laboratory and morbidity reports and records pertaining to venereal diseases, as defined under section six, shall not be public records, and the contents thereof shall not be divulged by any person having charge of or access to the same, except upon proper judicial order or to a person whose official duties, in the opinion of the commissioner, entitle him to receive information contained therein. Violations of this section shall for the first offence be punished by a fine of not more than fifty dollars, and for a subsequent offence by a fine of not more than one hundred dollars.

Amended by St.1948, c. 129, § 5.

§ 120. Repealed by St.1948, c. 120

§ 121. Treatment of venereal diseases or pulmonary tuberculosis in public charitable or penal institutions; expenses

An inmate of a public charitable institution or a prisoner in a penal institution who is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis shall be forthwith placed under medical treatment, and if, in the opinion of the attending physician, it is necessary, he shall be isolated until danger of contagion is passed or the physician determines his isolation unnecessary. If at the expiration of a prisoner's sentence he is afflicted with a venereal disease, as defined under section six or pulmonary tuberculosis in its contagious or infectious stages, or if, in the opinion of the attending physician of the institution or of such physician as the authorities thereof may consult, his release would be dangerous to public health, he shall be placed under medical treatment in the institution where he has been confined. Thereupon the authorities of such institution shall notify the department of public welfare of his condition and said department shall provide for his hospitalization and medical care at an institution until, in the opinion of the attending physician of the institution wherein he is being treated, the symptoms have disappeared and his release will not endanger the public health. Notice of a prisoner's release hereunder to the department of public welfare shall be made to the department of public health. The expense of his support, not exceeding three dollars and fifty cents a week, shall be paid by the town where he resides, after notice of the expiration of his sentence and of his condition to such town, or, if he is a state charge, by the commonwealth after like notice to the department of public welfare.

Amended by St.1945, c. 555; St.1948, c. 129, § 6; St.1974, c. 260, § 10.

§ 121A. Serological test for syphilis of pregnant women

A physician attending a pregnant woman in this commonwealth during gestation shall take or cause to be taken a sample of blood of such woman at the time of first examination, and shall submit such sample for a standard serological test for syphilis to a laboratory of the department or to a laboratory approved for such test by the department; provided, that not more than one physician attending a pregnant woman during gestation shall be required to comply with the provisions of this section.

Added by St.1939, c. 407.

NUISANCES

§ 122. Regulations relative to nuisances; examinations

The board of health shall examine into all nuisances, sources of filth and causes of sickness within its town, or on board of vessels within the harbor of such town, which may, in its opinion, be injurious to the public health, shall destroy, remove or prevent the same as the case may require, and shall make regulations for the public health and safety relative thereto and to articles capable of containing or conveying infection or contagion or of creating sickness brought into or conveyed from the town or into or from any vessel. Whoever violates any such regulation shall forfeit not more than one hundred dollars.

§ 122A. Unsafe or inadequate supply of water in places of habitation or where food or drink is served to public; option order

Upon determination by the board of health that the available supply of water for drinking, culinary and other domestic purposes in any place of habitation, or in any place where food or drink is prepared, handled or served to the public, is so unsafe or inadequate as to constitute a nuisance within the meaning of this chapter, said board may issue a written order to the owner of such place, as appearing in the current records of the assessors, requiring him to discontinue the use of the water supply, or, at his option, to provide such place with a water supply safe and adequate for such purposes. Any person who wilfully fails or refuses to comply with such an order shall be punished by a fine of not less than fifty dollars, and the board may thereupon cause the removal of the occupants of the place to which the order relates, which shall not again be occupied as a place of habitation or place in which food or drink is prepared, handled or served to the public, without its written permission. The superior court, on a petition in equity brought by said board, shall have jurisdiction by injunction or otherwise to enforce any order issued under this section.

Added by St.1947, c. 148.

§ 123. Abatement by owner

Said board shall order the owner or occupant of any private premises, at his own expense, to remove any nuisance, source of filth or cause of sickness found thereon within twenty-four hours, or within such other time as it considers reasonable, after notice; and an owner or occupant shall forfeit not more than twenty dollars for every day during which he knowingly violates such order.

§ 124. Service of order for abatement

Such order shall be in writing, and may be served personally on the owner, occupant or his authorized agent by any person authorized to serve civil process; or a copy of the order may be left at the last and usual place of abode of the owner, occupant or agent, if he is known and within or without the commonwealth; or a copy of the order may be sent to the owner, occupant or agent by registered mail, return receipt requested, if he is known and within the commonwealth. If the order is directed against the owner and if the residence and whereabouts of the owner or his agent are unknown or without the commonwealth, the board may direct the order to be served by posting a copy thereof in a conspicuous place on the premises and by advertising it for at least three out of five consecutive days in one or more newspapers of general circulation within the municipality wherein the building affected is situated.

Amended by St.1949, c. 280; St.1965, c. 898, § 2.

§ 125. Removal of nuisance by board

If the owner or occupant fails to comply with such order, the board may cause the nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall constitute a debt due the city or town upon the completion of the removal and the rendering of an account therefor to the owner, his authorized agent, or the occupant, and shall be recoverable from such owner or occupant in an action of contract.

The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of the claims for such debt, shall apply to any debt referred to in this section, except that the board of health shall act hereunder in place of the mayor or board of selectmen.

Amended by St.1970, c. 649, § 1.

§ 125A. Review of order adjudging the operation of a farm to be a nuisance

If, in the opinion of the board of health, a farm or the operation thereof constitutes a nuisance, any action taken by said board to abate or cause to be abated said nuisance under sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five shall, notwithstanding any provisions thereof to the contrary, be subject to the provisions of this section; provided, however, that the odor from the normal maintenance of livestock or the spreading of manure upon agricultural and horticultural lands shall not be deemed to constitute a nuisance.

In the case of any such nuisance a written notice of an order to abate the same within ten days after receipt of such notice shall first be given as provided in section one hundred and twenty-four. If no petition for review is filed as herein provided, or upon final order of the court, said board may then proceed as provided in said sections one hundred and twenty-two, one hundred and twenty-three and one hundred and twenty-five, or in the order of the court. If the owner or operator of said farm within said ten days shall file a petition for a review of such order in the district court for the district in which the farm lies, the operation of said order shall be suspended, pending the order of the court. Upon the filing of such petition the court shall give notice thereof to said board, shall hear all pertinent evidence and determine the facts, and upon the facts as so determined review said order and affirm, annul, alter or modify the same as justice may require. The parties shall have the same rights of appeal on questions of law as in other civil cases in the district courts.

Added by St.1958, c. 469. Amended by St.1979, c. 224.

§ 126. Location of privy vaults

If the city council of a city, or a town having a population of more than one thousand, accepts this section, or has accepted corresponding provisions of earlier laws, no privy vault shall be constructed upon premises connected with a common or private sewer or abutting on a public or private street, court or passageway in which there is a common sewer opposite thereto, without permission in writing having first been obtained from the board of health. And if, in the opinion of said board, a privy vault so situated is injurious to the public health, it shall declare the same a nuisance and forbid its continuance, and the three preceding sections shall apply thereto.

§ 127. Regulations relative to house drainage

The board of health of a city or town may make and enforce regulations for the public health and safety relative to house drainage and connection with common sewers, if such a sewer abuts the estate to be drained. Master plumbers and journeymen licensed under chapter one hundred and forty-two shall be exempt from any such regulation relative to license qualifications, but shall be subject to all other regulations. Whoever violates any such regulation shall forfeit not more than one hundred dollars.

Amended by St.1937, c. 339; St.1963, c. 148, § 2.

§ 127A. State sanitary code; adoption; enforcement; jurisdiction; speedy trial

Said department shall adopt, and may from time to time amend, public health regulations to be known as the state sanitary code, which may provide penalties for violations thereof not exceeding five hundred dollars for any one offence. Said code shall become effective and have the force of law upon filing with the state secretary or at such later date as may be specified by the department. The code shall deal with matters affecting the health and well-being of the public in the commonwealth in subjects over which the department takes cognizance and responsibility, including, but not limited to, standards of fitness for human habitation, housing and sanitation standards for farm labor camps, standards for recreational camps for children, and sanitation standards for food service establishments; provided, however, that single-purpose classes, workshops, clinics or programs sponsored by municipal recreation departments, or neighborhood playgrounds designed to serve primary play interests and needs of children, as well as affording limited recreation opportunities for all people of a residential neighborhood, whether supervised or unsupervised, located on municipal or non-municipal property, whether registration is required or participation is on a drop-in basis, shall not be deemed to be recreational camps for children. Nothing contained in the code shall be in conflict with any general or special law. This section shall not be deemed to limit the right of any board of health to adopt such rules and regulations as, in its opinion, may be necessary for the particular locality under its jurisdiction; provided, such rules and regulations do not conflict with the laws of the commonwealth or the provisions of the code. Said code may provide for the demolition, removal, repair or cleaning by local boards of health and, in the cities of Boston and Worcester, by the commissioner of housing inspection, of any structure which so fails to comply with the standards of fitness for human habitation or other regulations in said code, as to endanger or materially impair the health or well-being of the public. Said code or a supplement thereto shall designate those conditions which, when found to exist upon inspection of residential premises, shall be deemed to endanger or materially impair the health or safety of persons occupying the premises. This designation shall not be construed at prohibiting an inspector or other authorized person from certifying that any other violation or combination or series of violations of said code or other applicable laws, ordinances, by-laws, rules or regulations may endanger or materially impair the health or safety of said persons when such certification is otherwise appropriate.

Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced, but, if any such local boards fail after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator. The superior court shall have jurisdiction in equity to enforce the provisions of said code and any actions brought to enforce said provisions shall be advanced for speedy trial.

Added by St.1965, c. 898, § 3. Amended by St.1971, c. 261; St.1973, c. 880; St.1975, c. 706, § 174; St.1978, c. 104; St.1979, c. 380, § 1.

§ 127B. Dwellings unfit for human habitation; order to vacate or to abate nuisance; removal of occupants; demolition expense, lien; inspection reports; code violations; notices; enforcement proceedings, jurisdiction; appeal

Upon a determination by the board of health, or, in the cities of Boston and Worcester, by the commissioner of housing inspection, after examination as provided in said code, that a building, tenement, room, cellar, mobile dwelling place or any other structure *(a)* is unfit for human habitation, *(b)* is or may become a nuisance, or *(c)* is or may be a cause of sickness or home accident to the occupants or to the public, it may issue a written order to the owner or occupant or any of them thereof, requiring the owner or occupant to vacate, to put the premises in a clean condition, or to comply with the regulations set forth in said code which are not being complied with or to comply with the rules and regulations adopted by the board of health as being necessary for the particular locality. The order shall be served in the same manner as is provided for the service of an order by section one hundred and twenty-four. A copy of such order shall be served upon any mortgagee of record by sending the same by registered mail, return receipt requested. If the owner or occupant refuses to comply with such order, the board of health may cause the premises to be properly cleaned at the expense of the owner or occupant, remove the occupant forcibly and close up the premises, or it may issue a written notice to the owner of such building, as appearing in the current records of the assessors of such town, setting forth the particulars of such unfitness and requiring that the conditions be remedied. If the person so notified fails within a reasonable time to remedy the conditions thus set forth, the superior court on a petition in equity brought by the board of health, shall have jurisdiction, by injunction or otherwise, to enforce the requirements of the board of health. A copy of such written notice shall be served upon any mortgagee of record, by sending the same by registered mail, return receipt requested. No occupant of any residential premises may be removed, nor any order to vacate issued to any such occupant, unless the board of health has previously issued a written finding that the premises are unfit for human habitation. The board shall enter in said finding the material facts upon which such finding is based. No such finding shall be made before said occupants have been given written notice and an opportunity for a public hearing to be held not less than five days after receipt of such notice, unless the board of health determines in writing that the danger to the life or health of the occupants is so immediate that no delay may be permitted. In all other cases in which the board of health determines that residential premises are not unfit for human habitation but that conditions within such premises in violation of said code or rules and regulations may not be remedied unless the occupants are removed therefrom, it may bring an action to remove the occupants from the premises pursuant to chapter two hundred and thirty-nine. In any such action, the court shall consider the matter according to the procedures and standards otherwise set forth in said chapter, and may grant a stay or stays of execution when appropriate. Premises closed up under the provisions of this section shall not be occupied as a human habitation without written permission of the board of health. If compliance with the regulations contained in said code has not been effected within one year from the date the premises have been so closed up the board of health may cause such structure to be demolished or removed; provided, however, that said board, upon written certification to it by the head of the local health department that immediate demolition or removal is essential to protect the health and safety of the public, may cause such demolition or removal within ninety days of said closing. A claim for the expense incurred by said board in cleaning the premises or in causing such structure to be demolished or removed shall constitute a debt due the city or town upon the completion of the work and the rendering of an account therefor to the owner of such structure, and shall be recoverable from such owner in an action of contract.

Any such debt, together with interest thereon at the rate of six per cent per annum from the date such debt becomes due, shall constitute a lien on the land upon which the structure is or was located if a statement of claim, signed by the board of health, setting forth the amount claimed without interest is filed, within ninety days after the debt becomes due, with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies. Such lien shall take effect upon the filing of the statement aforesaid and shall continue for two years from the first day of October next following the date of such filing. Such lien may be dissolved by filing with the register of deeds for record or registration, as the case may be, in the county or in the district, if the county is divided into districts, where the land lies, a certificate from the collector of the city or town that the debt for which such lien attached, together with interest and costs thereon, has been paid or legally abated. Such collector shall have the same powers and be subject to the same duties with respect to such claim as in the case of the annual taxes upon real estate, and the provisions of law relative to the collection of such annual taxes, the sale or taking of land for the nonpayment thereof, and the redemption of land so sold or taken shall apply to such claim.

Local boards of health shall enforce said code in the same manner in which local health rules and regulations are enforced but if, any such local board fails after the lapse of a reasonable length of time to enforce the same, the department may in like manner enforce said code against any violator.

The superior court shall have jurisdiction in equity to enforce the provisions of said code.

A board of health and, in the cities of Boston and Worcester the commissioner of housing inspection, or local code enforcement agency may file a petition under section one hundred and twenty-seven H.

A copy of the report of any investigation or inspection of residential premises for violations of the code or other applicable laws, ordinances, by-laws, rules or regulations, and of any written order or notice issued by the board, shall be delivered personally or sent by first class mail to the occupants of all affected premises within seven days after the investigation or inspection of the premises or the issuance of the order or notice. A notice of the date, time and place of any administrative or court hearings scheduled by or known to the board relating to violations, including all referrals of violations to other government agencies, shall also be delivered or sent to the occupants. All investigation or inspection reports shall include the name of the inspector, and the date and time of the inspection or investigation; the date and time of any scheduled follow-up inspection; a description of the conditions constituting the violations, if any; a listing of the specific provisions of the code or other applicable laws, ordinances, by-laws, rules or regulations that appear to be violated; a determination by the official inspecting the premises whether each violation, or the cumulative effect of all violations, may endanger or materially impair the health, safety or well-being of any occupant or the public; a determination by said official whether any violations appeared to be substantially caused by the occupant or any person acting under his control; and a brief summary of the statutory remedies available to occupants of the affected premises. All reports, orders or notices relating to such inspections, investigations, or violations shall be public records, and shall be kept on file by the originating agency according to law.

Any person aggrieved by the failure of any inspectors or other personnel of the board or other code enforcement agency to inspect upon request any premises that the board or agency may lawfully inspect, or to find violations of law where such violations are claimed to exist, or to certify that such violations may endanger or materially impair the health, safety or well-being of the occupants, may appeal such failure to act to the full board or to the head of the agency. Such appeal shall be given a speedy hearing before said board or an impartial officer of said agency.

Added by St.1965, c. 898, § 3. Amended by St.1966, c. 78; St.1972, c. 522; St.1973, c. 295; St.1973, c. 920; St.1974, c. 298; St.1978, c. 104, §§ 2, 3.

§ 127C. Petition in district court for violation of sanitary code; requisites

If the condition of any building or any part thereof used for residential purposes is in violation of the standards of fitness for human habitation established under the state sanitary code, as provided by section one hundred and twenty-seven A, or in violation of any board of health standards, a petition may be filed by any affected tenant or by the board of health, or, in the cities of Boston and Worcester, by the commissioner of housing inspection, in a district court within the judicial district of which such building is situated. The petition shall state that the premises have been inspected by the board of health or other appropriate inspection agency and that the condition of said premises has been found to be in violation of the state sanitary code; that such condition may endanger or materially impair the health or well-being of any tenant therein; and that said condition was not substantially caused by the tenant or any other person acting under his control.

An affected tenant may also file a petition in such district court without stating that such premises have been found by an appropriate inspection agency to be in violation of any such standards, provided that he states (*a*) facts sufficient to demonstrate a likely violation of the state sanitary code which may endanger or materially impair the health or well-being of any tenant in the building or premises occupied by such tenant, (*b*) that the conditions in question were not substantially caused by such tenant or any person acting under his control and (*c*) that a request for inspection of such premises was made to the appropriate inspecting agency at least twenty-four hours prior to the filing of the petition and that there has been no inspection.

Added by St.1965, c. 898, § 3. Amended by St.1969, c. 242; St.1978, c. 104, § 4.

§ 127D. Entry fee; notice upon offending owner

The entry fee for a petition under section one hundred and twenty-seven C shall be two dollars. Upon the filing of such a petition, an order of notice shall issue requiring the owner of record to appear at a time not later than fourteen days after the issuance of said order of notice, to file an answer to the matters alleged in the petition including therein the names and addresses of any mortgagees or lienors of record known to the owner of record, and to submit to a hearing thereon.

Such order of notice shall be served at least seven days before the return day thereof, by any officer qualified to serve civil process by delivering to the respondent an attested copy thereof, or, by leaving such copy at his last and usual place of abode, or, at the address to which the rent is sent or delivered, or, if the respondent is a corporation, service may also be made in the manner provided by law or by leaving an attested copy thereof at the last and usual place of abode of the president, treasurer or clerk of the corporation, or in such other manner as the court may direct.

Added by St.1965, c. 898, § 3.

§ 127E. Copy of report of investigation; admissibility in evidence

A copy of the report of the investigation by the department of public health or the board of health, or, in the cities of Boston and Worcester, the commissioner of housing inspection, certified as a true copy by the custodian of the records of such agency shall be admissible in any proceeding brought under section one hundred and twenty-seven C without further authentication, and shall be prima facie evidence of the facts stated therein.

Added by St.1965, c. 898, § 3. Amended by St.1978, c. 104, § 5.

§ 127F. Court order regarding rental payments; disbursement of funds

If the court finds after hearing that the facts are as alleged in said petition, it may by written order authorize the petitioner or any other affected tenant to pay to the clerk of the court the fair value of the use and occupation of the premises, or such installments thereof from time to time as the court may direct; provided the court finds that any such violation may endanger or materially impair the health, safety or well-being of such tenant and that such payments are necessary to remedy the condition constituting the violation; and that said tenant is not in arrears in his rent, taking into account any abatement of rent due to the existence of such violations, or if he is in arrears is willing to pay any arrearage into the court as ordered. A person occupying the premises shall not be considered to be in arrears in his rent when the amount of rent the landlord alleges in good faith to be due is equal to or less than the amount of any counterclaim that said person may bring in good faith against the landlord, including any damages owed because of a breach of warranty or a violation of any other law. In determining said fair value, the court may be guided by any findings issued by the department or any other agency concerned with the condition of residential premises and any other evidence relative to the effect of violations of such standards upon the use and occupation of residential premises. Any order of the court shall be forthwith sent by the clerk of the court to any and all mortgagees and lienors of record as the court deems proper under the circumstances.

The court may direct the clerk by written order to disburse all or any portion of the rental payments received by him to the respondent for the purpose of effectuating the removal of the violation. The court may also direct the clerk to make such other disbursements of the rental payments to the respondent or to any other person as in the judgment of the court will permit the owner to maintain the property.

When the violation is removed, the court shall direct that the balance of funds, if any, remaining with the clerk be paid to the respondent. The court may render judgment for costs in its discretion.

Added by St.1965, c. 898, § 3. Amended by St.1975, c. 467, § 1.

§ 127G. Removal from district to superior court; transmittal of rents and removal fees

At any time after thirty days from the date of the court's order authorizing the making of rental payments into court under section one hundred and twenty-seven F, upon application of any party and upon payment of a removal fee of five dollars, the clerk of the district court shall remove the case to the superior court for further proceedings therein, in the same manner and to the same extent as if the petition had originally been brought in said court pursuant to the provisions of section one hundred and twenty-seven B. The clerk of court shall forthwith transmit any rents held by him, as the result of a written order issued under section one hundred and twenty-seven F together with the removal fee, to the clerk of the superior court. The provisions of this section shall not apply to any case brought in the housing court of the city of Boston or in the housing court of the county of Hampden.

Added by St.1965, c. 898, § 3. Amended by St.1971, c. 843, § 3; St.1973, c. 591, § 2.

§ 127H. Petition by tenant to enforce sanitary code; contents; process; orders of court

Any tenant who rents space in a building for residential purposes wherein a condition exists which is in violation of the standards of fitness for human habitation established under the state sanitary code or in violation of any board of health standards, which condition may endanger or materially impair his health or well-being or the health or well-being of the public, may file a petition against the owner of said building to enforce the provisions of the said code in the superior court. Such petition shall set forth the violation of the state sanitary code or the rules and regulations of the board of health shall state that such condition may endanger or materially impair the health or well-being of any tenant therein; and that said condition was not substantially caused by the tenant or any other person acting under his control. The petition shall also state that the violation has been determined to exist by inspection of a board of health or, in the cities of Boston and Worcester, of the commissioner of housing inspection, or shall state that such inspecton had been requested at least twenty-four hours prior to the filing of the petition and that there has been no inspection. Upon filing such petition, process shall issue and be served, and a hearing shall be held as provided in section one hundred and twenty-seven D. At least seven days prior to any hearing the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors of record, and shall notify them of the time and place of the hearing.

The provisions of section one hundred and twenty-seven E shall apply in any such hearing.

The court may:

(a) issue appropriate restraining orders, preliminary injunctions and injunctions;

(b) authorize any or all tenants in the respondent's building wherein the violation exists to pay the fair value of the use and occupation of the premises or such installments thereof from time to time as the court may direct to the clerk of the court in the same manner and subject to the same provisions as contained in section one hundred and twenty-seven F;

(c) order all the tenants in the respondent's building wherein the violation exists to vacate the premises, and order the board of health to close up said premises; or

(d) appoint a receiver.

A copy of any order, finding or decree made by the court hereunder shall be forthwith sent by the clerk of the court to any mortgagee and lienor of record.

Added by St.1965, c. 898, § 3. Amended by St.1972, c. 201; St.1975, c. 467, § 2; St.1978, c. 104, § 6.

§ 127*I*. Powers and duties of receiver

Upon appointment such receiver shall post such bond as may be deemed sufficient by the court, shall forthwith collect all rents and profits of the property as the court shall direct and use all or any of such funds, or funds received from the commonwealth as hereinafter provided, to enable such property to meet the standards of fitness for human habitation. A receiver shall have such powers and duties as the court shall determine, including the right to evict for nonpayment of rent. A receiver may be a person, partnership or corporation.

Added by St.1965, c. 898, § 3.

§ 127J. Petition by receiver to apply for financial assistance; notice and hearing; financial assistance; lien

A receiver may petition the court for leave to apply for financial assistance from the commonwealth to supplement funds otherwise available from rents, if he deems that the rents are insufficient to effectuate the necessary repairs or rehabilitation. Seven days' notice of a hearing on said petition shall be given to the respondent as well as any mortgagees or lien holders of record. The court, after hearing, may, by decree, authorize the receiver to apply for such financial assistance, if it finds such assistance is necessary, that it is in a reasonable amount and that the sum required to repair and rehabilitate the premises is not so excessive as to constitute an imprudent and unreasonable expenditure to accomplish the purpose.

Application for financial assistance shall be made to the department of public health in such manner and on such forms as may be prescribed by said department.

Said department may expend for such assistance such sums as may be appropriated therefor.

The receiver shall return any unused portion of any sums received by him to the commonwealth. The balance owed by the receiver to the commonwealth shall, together with interest thereon at the rate of six per cent per annum, constitute a debt due the commonwealth, upon the rendering of an account therefor to the owner of record, and shall be recoverable from such owner in an action of contract. Any such debt, including interest thereon, shall constitute a lien on the property involved, if a notice of such lien is recorded on behalf of the commonwealth in the proper registry of deeds within ninety days after the debt becomes due.

Any proceeding under this section may be advanced for speedy trial.

Added by St.1965, c. 898, § 3.

§ 127K. Agreement to waive enforcement of sanitary code; validity

Any provision of a lease or other rental agreement relating to real property whereby a lessee, tenant or occupant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to waive the benefits of any provision of section one hundred and twenty-seven C to one hundred and twenty-seven I, inclusive, shall be deemed to be against public policy and void.

Added by St.1968, c. 404, § 2.

§ 127L. Repairs by tenants of residential premises to cure violations; reimbursement for cost

When violations of the standards of fitness for human habitation as established in the state sanitary code, or of other applicable laws, ordinances, by-laws, rules or regulations, may endanger or materially impair the health, safety or well-being of a tenant of residential premises and are so certified by the board of health or local code enforcement agency, or in the cities of Boston and Worcester by the commissioner of housing inspection, or by a court of law, and if the owner or his agent has been notified in writing of the existence of the violations and has failed to begin all necessary repairs or to contract in writing with a third party for such repairs within five days after such notice, and to substantially complete all necessary repairs within fourteen days after such notice, unless a board of health, local code enforcement agency or court has ordered that said violations be corrected within a shorter period, in which case said period shall govern, the tenant or tenants may repair or have repaired the defects or conditions constituting the violations. The tenant or tenants may subsequently deduct from any rent which may subsequently become due, subject to the provisions of the following paragraph, an amount necessary to pay for such repairs. The tenant or tenants may, alternatively in such cases, treat the lease or rental agreement as abrogated, pay only the fair value of their use and occupation and vacate the premises within a reasonable time.

A tenant may not deduct pursuant to this section an amount greater than four months' rent in any twelve-month period, or period of occupancy, whichever is shorter, from rent due to the owner. Such amount shall be computed on the basis of the highest monthly rent during the tenant's occupancy or during the twelve-month period before the violation is repaired, whichever is shorter. Where the violation affects more than one unit of a multi-unit structure, or a portion of the structure reserved for the common use of tenants, the amount deducted for repairs for all affected tenants shall not exceed the total of four months' rent due to the owner from all affected tenants. Failure to exercise any rights under this section in any twelve-month period shall not increase a tenant's rights in any subsequent twelve-month period.

The owner may recover from the tenant any excessive amount deducted from the rent. The amount deducted shall be excessive to the extent that it exceeded four months' rent as calculated pursuant to the preceding paragraph, or if it was unreasonable under all the circumstances. The criteria for unreasonableness shall include, but are not limited to, the alternatives available to the tenant at the time the violations were first reported, the urgency of the need to repair, and the quality and cost of the work done. Any excess deducted may be recovered in an action in contract, but not in an action for possession of the rental premises. The terms of such recovery may include an increase in rent for such future periods as the court may order. No owner may increase rents because of repairs made pursuant to this section, except pursuant to such a court order, and the provisions of section eighteen of chapter one hundred eighty-six shall apply to any such increase in rent.

The rights afforded tenants under this section shall not extend to conditions or violations caused by a tenant or by a person in the family or household of a tenant or by a business invitee or guest of a tenant. A tenant may not invoke the protection of this section if he has unreasonably denied the owner access to the dwelling unit and thereby prevented the owner from making necessary repairs.

In no case may the rights afforded a tenant under this section be construed to limit any other remedies available to him by law, or to impose a duty on him to repair, or to create or imply an assumption of any risk by the tenant; nor shall they relieve a landlord of any existing duty or liability under the state sanitary code or other applicable statutes, rules, regulations, by-laws, or ordinances.

Any provision of a residential lease or rental agreement whereby a tenant, lessee, or occupant enters into a covenant, agreement or contract, the effect of which is to waive the benefits of any provision of this section, shall be against public policy and void; except that a covenant in any lease of two years' duration not counting any renewal periods, in which the tenant undertakes to make certain defined repairs or renovations in consideration for a substantially lower rent, shall not be against public policy nor void.

Added by St.1972, c. 799. Amended by St.1975, c. 274, §§ 1 to 3; St.1978, c. 104, § 7.

§ 127M. Repealed by St.1975, c. 615

§ 127N. Actions by tenants against owners of residential premises; joinder of certain other persons as parties; liability; exception

In actions brought under this chapter against owners of residential premises a tenant may, prior to a hearing on the merits, move to join the following persons as parties: any individual, trust or corporation, partnership, association or other person who, acting alone or with another, has the authority to decide whether to rehabilitate, or sell or otherwise dispose of the premises, with or without record title or recorded interest. Such person shall not be joined, however, if its decisionmaking authority is derived solely from its position as a fiduciary if such person has never personally had any financial or possessory interest in the premises.

If the court finds that the owner may be unable for financial reasons or otherwise to perform any act or pay any liability that may be ordered if judgment is entered for the tenant, and court shall allow the motion joining any such person. The owner and any person so joined shall be jointly and severally liable for taking any action or paying any damages ordered by the court; provided, however, that the provisions of this section regarding the liability of persons other than owners shall not apply to two and three family owner-occupied residential premises.

Added by St.1974, c. 681.

§ 128. Repealed by St.1954, c. 209, § 1

§ 128A. Filling of sites of demolished or removed buildings

The board of health may adopt and, from time to time, revise regulations requiring that the site of a demolished or removed building or structure be levelled to uniform grade by a sanitary fill proper to prevent rodent harborage and other insanitary conditions.

Added by St.1949, c. 156, § 1.

§§ 128B to 128F. Repealed by St.1963, c. 390, § 2

§ 128G. Farm labor camps; inspection; certificate; complaints

The department shall annually inspect all farm labor camps as defined in the state sanitary code, or, in lieu thereof, may delegate any such annual inspection to a local board of health. When such inspection is so delegated, the local board of health shall make its inspection and file its report with the department within thirty days of notice of such delegation. If a farm labor camp after inspection conforms with the requirements of said code the department shall issue a certificate of occupancy which shall be posted upon one or more of the buildings comprising such camp. No such camp shall be opened in any year unless a current certificate of occupancy has been so posted. Any such certificate may be revoked for any violation of said code which the department after inspection determines exists. Complaints in writing of violations of the sanitary code, whether filed with the local board of health or the department, shall be investigated by the department as soon as practicable but in any event within thirty days after such filing. If any such complaint is filed with the local board of health said board shall forthwith forward said complaint to the department. The provisions of this section shall not be construed to limit or restrict the powers and duties of local boards of health.

Added by St.1967, c. 718, § 5.

§ 128H. Migrant workers; educational and recreational opportunities; locomotion; visitation rights; regulations; injunctive relief

The department of public health shall, as a part of its inspection of a site for a farm labor camp, determine what educational and recreational opportunities may be available for migrant workers, and shall, as far as is practical, encourage the development of such opportunities in cooperation with local and state agencies. The department shall protect the right of the migrant worker to enter and leave the premises of the employer during the period of his employment, and shall include in its certificate of occupancy a notification to the worker that such right exists, notwithstanding any contract provision to the contrary. A worker living in quarters apart from the living quarters of his employer shall have reasonable rights of visitation in his living quarters outside of regular working hours and the certificate of occupancy issued by the department shall include notification, in English and in Spanish, of said rights. The department shall establish, by promulgation of regulations, such minimum standards relating to the rights of visitation under this section as will ensure the adequate protection of said rights. The superior court shall have jurisdiction in equity upon petition brought by the department in the name of the commonwealth to restrain and enjoin violations of this, or of section one hundred and twenty-eight G, or regulations promulgated thereunder.

Added by St.1967, c. 718, § 5A. Amended by St.1971, c. 373.

§ 129. Removal or destruction of nuisance on conviction of owner

If a person is convicted on an indictment for a common nuisance injurious to the public health, the court may order the nuisance to be removed or destroyed at the expense of the defendant, under the direction of the board of health.

§ 130. Enjoining nuisance

The superior court, either before or pending a prosecution for a common nuisance affecting the public health, may enjoin the maintenance of such nuisance until the matter is decided or the injunction dissolved.

§ 131. Compulsory examination of premises; complaint; warrant

If the board considers it necessary for preservation of life or health to enter any land, building or premises, or go on board a vessel within its town, to examine into and destroy, remove or prevent a nuisance, source of filth or cause of sickness, and the board, or any agent thereof sent for that purpose, is refused such entry, any member of the board or such agent may make complaint to a justice of any court of record or to a magistrate authorized to issue warrants, who may thereupon issue a warrant, directed to the sheriff or any of his deputies, to such member or agent of the board, or to any constable of such town, commanding him to take sufficient aid and at any reasonable time repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and to destroy, remove or prevent the same, under the direction of the board.

§ 132. Abatement of wet, rotten or spongy land covered with stagnant water; appropriation

Land which is wet, rotten or spongy, or covered with stagnant water, so as to be offensive to residents in its vicinity or injurious to health, shall be deemed a nuisance, which the board of health of the town where it lies, upon petition and hearing, may abate in the manner provided in the seven following sections; but if the expense of abatement will exceed two thousand dollars, such abatement shall not be made without a previous appropriation therefor.

§ 133. Application for abatement of nuisance

Whoever is injured by such nuisance may, by petition describing the premises upon which it is alleged to exist and stating the nature of the nuisance complained of, apply to the board for its abatement; whereupon such board shall view the premises and examine into the nature and cause of such nuisance.

§ 134. Proceedings on application for abatement; notice

Upon such examination, if the board is of opinion that the petition should be granted, it shall appoint a time and place for a hearing, first giving reasonable notice thereof to the petitioners, to the persons whose lands it may be necessary to enter upon to abate the nuisance, and to any other persons who may be damaged or benefited by the proceedings, and to the mayor or the chairman of the selectmen, unless the selectmen constitute the board of health, that they may be heard upon the necessity and mode of abating such nuisance, the question of damages, and of the assessment and apportionment of the expenses of the abatement.

§ 135. Form of notice; service

Such notice shall be in writing, and may be served, by any person authorized to serve civil process, by personal service upon the mayor or chairman of the selectmen, the petitioners, the owner or occupant of any land upon which it may be necessary to enter or which may be benefited by the abatement, or the authorized agent of such owner or occupant, or by leaving an attested copy of such notice at the last and usual place of abode of such persons; but if the land is unoccupied and the owner or agent is unknown or out of the commonwealth, the notice to such owner may be served by posting an attested copy thereof upon the premises, or by advertising in one or more newspapers in such manner and for such length of time as the board may order.

§ 136. Abatement of nuisance; damages; assessment

At the time and place appointed therefor, the board shall hear the parties, and thereafter may cause such nuisance to be abated by entering upon any land and by making such excavations, embankments and drains therein and under and across any ways as may be necessary; and shall also determine in what manner and at whose expense the improvements shall be kept in repair, shall estimate and award the damage sustained by and the benefit accruing to any person by reason of such improvements, and what proportion of the expense of making and keeping the same in repair shall be borne by the town and by the persons benefited thereby. The board shall forthwith give notice of its decision, in the manner required in the preceding section, to the parties to whom notice is required to be given by section one hundred and thirty-four and to the assessors of said town. The expense of making and keeping such improvements in repair shall be assessed by the assessors upon the persons benefited thereby, as ascertained by said decision, shall be included in their taxes, shall be a lien upon the land benefited thereby, and shall be collected in the same manner as other taxes upon land. Apportionment of assessments under this section may be made and the parts thereof be collected as provided in chapter eighty.

§ 137. Appeal from adjudication of nuisance

A person entitled to notice under section one hundred and thirty-four, who is aggrieved by the decision of said board or of the commissioners appointed under section one hundred and forty that the land described in the petition is a nuisance, may appeal therefrom to the superior court within twenty days after notice of such decision by filing a petition in said court stating his grievance and the action of said board thereon, and enters into such recognizance as said court shall order. Said court may hear and determine such appeal, pending which all proceedings by the board of health relative to such nuisance shall be stayed.

Amended by St.1961, c. 326.

§ 138. Appeal from award of damages, determination of benefits accrued or apportionment of expense; notice

Whoever is aggrieved by such decision in the award of damages or in the determination of benefits accrued or in the apportionment of the expense may, within three months after notice thereof, petition the superior court under chapter seventy-nine or chapter eighty, first giving one month's notice in writing to the mayor and aldermen or selectmen of his intention so to do, and particularly specifying therein his objections to said decision. Such petition shall otherwise be made in like manner and the proceedings thereon shall be the same as in case of land taken or betterments assessed under said chapters, respectively.

§ 139. Return

The board shall, within thirty days after the abatement of such nuisance, make return of its doings to the town clerk, who shall record them in the town records.

§ 140. Appointment of commissioners

If the board unreasonably refuses or neglects to proceed in the matter of said petition, the petitioner may apply to the superior court, which, upon a hearing and for good cause shown, may appoint three commissioners, who shall proceed in the manner provided in sections one hundred and thirty-three to one hundred and thirty-nine, inclusive.

§ 141. Application to county commissioners from refusal or neglect of board to abate nuisance; hearing; notice

Whoever is aggrieved by the neglect or refusal of the board of health to pass all proper orders abating a nuisance, in accordance with any provision of sections one hundred and twenty-two to one hundred and thirty-nine, inclusive, may apply to the county commissioners, who may hear and determine such application and exercise in such case all of the powers of said board. The applicant shall, within twenty-four hours after such neglect or refusal, file with said board a written notice to the adverse party of his intention so to apply to the county commissioners, and within seven days after the filing of said written notice shall present a petition to one of the county commissioners, stating the grievance complained of and the action of the board of health thereon or the neglect or refusal of said board to act thereon, as the case may be.

Amended by St.1937, c. 278.

§ 142. Costs and expenses; award; payment

Each county commissioner, when acting under the preceding section, shall tax three dollars a day for time and five cents a mile for travel to and from the place of meeting, which shall be paid into the county treasury; and such costs shall in the first instance be paid by the applicant, and the commissioners may award that costs of the proceeding shall be paid by any party thereto.

§ 142A. Pollution or contamination of atmosphere; prevention; regulations; filing; violation; enforcement

The department of environmental quality engineering, in this section and in sections one hundred and forty-two B to one hundred and forty-two E, inclusive, called the department, may from time to time, subject to the approval of the governor and council, after a hearing adopt or amend regulations to prevent pollution or contamination of the atmosphere, effective upon filing with the state secretary as provided in section thirty-seven of chapter thirty, or at such later date as may be specified by the department. Such filing shall create a presumption, which may be rebutted, of compliance with the requirements of section two of chapter thirty A in the adoption or amendment of such regulations. Any municipality, corporation or person, which, after due notice, continues to violate any such regulation shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars for the first offence, and not less than twenty nor more than one hundred dollars for every succeeding offence. The supreme judicial or superior court, upon the application of the department, or upon the application of any person interested, with the approval of the department, may enforce such regulations, and restrain the use or occupation of the premises or such portion thereof as the department may specify until such regulations have been complied with.

Added by St.1954, c. 672, § 3. Amended by St.1959, c. 422; St.1975, c. 706, § 175.

§ 142B. Metropolitan air pollution control district; establishment; composition; powers of department

There is hereby established a metropolitan air pollution control district, to consist of the territory and waters comprised within the cities and towns of Arlington, Belmont, Boston, Braintree, Brookline, Cambridge, Canton, Chelsea, Dedham, Everett, Lynn, Malden, Medford, Melrose, Milton, Needham, Newton, Peabody, Quincy, Revere, Saugus, Somerville, Stoneham, Wakefield, Waltham, Watertown, Weymouth, Winchester, Winthrop, and Woburn, and such other cities and towns as may, after application for admission to the said district, be admitted thereto by the department; provided, that said district shall at all times be composed of contiguous territory.

The department shall control the pollution of the atmosphere within said district. The department may from time to time, after a public hearing, prescribe and establish, amend or repeal, rules and regulations to prevent pollution or undue contamination of the atmosphere within said district. Whoever knowingly violates any such rule or regulation shall be punished by a fine of not less than ten nor more than fifty dollars for each offense.

Personnel of the department may in the performance of their duties under this section enter and inspect any premises, providing said personnel receive the consent of the owner or person in control of such premises. A court, judge or justice authorized to issue warrants in criminal cases may, upon sworn testimony by said personnel that consent for such entry and inspection has been requested and refused, and upon further sworn testimony either (1) that a reasonable inspection of industrial or commercial premises is necessary to detect, prevent or warn against conduct or conditions which may threaten the public health, comfort and convenience by contributing to air pollution, or (2) that a reasonable nondiscriminatory public health inspection, of which the inspection of the particular premises is a part, has been authorized by the department and is being undertaken to detect, prevent or warn against conduct or conditions which may threaten the public health, comfort and convenience by contributing to air pollution, if satisfied that such testimony is true, issue a warrant identifying the particular premises and authorizing said personnel seeking the warrant to conduct a reasonable search of such premises during daylight hours if the premises is residential, or during operating hours if the premises is industrial or commercial. For the purposes of securing a warrant under this section, belief or knowledge regarding actual conduct or conditions in a particular premises shall not be necessary. Notwithstanding the provisions of any law to the contrary, any information, record, or particular part thereof, other than emission data, submitted to the department pursuant to this section, shall, upon request, be kept confidential and not considered to be a public record when it is deemed by the commissioner that such information, record, or report relates to secret processes, methods of manufacture, or production or that such information, record, or report if made public would divulge a trade secret.

This section shall not operate to abrogate any of the powers and duties, as defined by general or special law, of any agency or political subdivision of the commonwealth.

The department shall have power to order any person, corporation, or political subdivision having control of an air contamination source, other than an employee, to stop or abate violation of any of the rules and regulations adopted pursuant to this section or of any of the rules and regulations adopted under the provisions of section one hundred and forty-two A and standards adopted under section one hundred and forty-two D. Said order shall inform the alleged violator in writing of his right to request, within ten days, a hearing under the provisions of chapter thirty A, but if no such request is made within ten days, said person, corporation, or political subdivision shall be deemed to have consented to the order. If said person, corporation, or political subdivision requests a hearing, the commissioner of environmental quality engineering, in this section and section one hundred and forty-two E called the commissioner, or his designee shall within a reasonable time hold a hearing under the provisions of said chapter thirty A. The commissioner may reissue such order as is warranted and all orders, permits, or other determinations of the commissioner, except those consented thereto, shall be subject to judicial review as provided in chapter thirty A. Any person, corporation, or political subdivision violating any order of the department shall be punished by a fine of not less than fifty nor more than one hundred dollars for the first offense and not less than two hundred nor more than five hundred dollars for each succeeding offense. For the purpose of this paragraph each subsequent day or part thereof of violation of such an order, whether such violation be continuous or intermittent, shall be construed as a separate and succeeding offense. The superior court sitting in equity, on petition of the department or any person authorized by the department shall have jurisdiction to enforce any such order and to restrain violations of any rules or regulations adopted pursuant to this section until such rules and regulations have been complied with.

The department may, for the purpose of conducting a continuing inventory of air pollution source emissions, require any person owning, operating, or having control of any air contamination source to register said source with the department and to supply such information pertaining to said source as the department may specify. Registration shall be on a form supplied by the department and shall be accomplished within a period of time specified by the department after public notice, provided said period of time shall be not less than thirty days.

Nothing in this section or in any rule or regulation adopted hereunder shall be construed as relieving, under any circumstances, any person, corporation, or political subdivision from responsibility or liability for any damages which may occur or for civil or criminal proceedings arising out of or as a result of any action of said person, corporation, or political subdivision, regardless of any action of the department, and persons other than the department shall not acquire actionable rights by virtue of such action.

The department shall maintain and operate such air sampling stations and devices; make or perform such routine and special examinations, inspections, observations, determinations, laboratory analyses, and surveys; maintain such records; and perform such other acts as it deems necessary to conduct an adequate air pollution control program within the metropolitan air pollution control district.

The commonwealth shall be reimbursed, as hereinafter provided, for all appropriations made by the general court and expended by the department for such purposes. The state treasurer shall issue his warrant requiring the assessors of the cities and towns of the metropolitan air pollution control district to assess a tax in the amount of the sums expended, one half of which shall be in proportion to their assessed valuations and one half of which shall be in proportion to their respective populations; provided, that any such city or town may in any year anticipate in whole or in part its assessment, and appropriate, raise, and deposit the amount thereof with the state treasurer, and any sum so deposited shall be credited against such assessment. The assessed valuations of the several cities and towns shall be the last preceding valuations made for purposes of apportioning the state tax.

Added by St.1960, c. 676, § 1. Amended by St.1965, c. 472; St.1971, c. 797; St.1971, c. 800; St.1972, c. 359, § 1; St.1975, c. 706, § 176; St.1979, c. 55.

§ 142C. Future districts; formation

Other air pollution control districts similar to that established by section one hundred and forty-two B may be formed upon approval of the department. Each such district shall be composed of two or more political subdivisions of the commonwealth and of contiguous territory. Cities or towns wishing to form such a district shall make joint application to the department, requesting the department to approve such district and to effect the control of air pollution therein. The powers, duties, and rights of the department in the exercise of air pollution control in such districts and the manner in which funds shall be made available to it shall be as provided in section one hundred and forty-two B.

Added by St.1960, c. 676, § 1.

§ 142D. Air pollution control districts; standards and plans for implementation; establishment; periodic review; amendment; compliance with minimum federal standards

The department, with the approval of the governor, may establish air pollution control districts compatible with such air quality control regions as may be designated by the secretary of the federal department of health, education and welfare under the provisions of the Air Quality Act of 1967, or any additions or amendments thereto. The department, with the approval of the governor, may add to or remove from air pollution control districts such cities and towns, and may establish or abolish such other air pollution control districts, as it may deem advisable and necessary to effect air pollution control in the commonwealth. The department may adopt, and from time to time amend, after public hearings, ambient air quality standards applicable to said districts and to other portions of the commonwealth, and shall adopt a plan for the implementation, maintenance and attainment of such standards. The powers, duties and rights of the department in the exercise of air pollution control in districts established under this section and the manner in which funds shall be made available to it shall be as provided in section one hundred and forty-two B.

From time to time the department shall review the ambient air quality standards and plan for implementation, maintenance and attainment of such standards adopted pursuant to this section and, after public hearings, shall amend such standards and implementation plan so as to minimize the economic cost of such standards and plan for implementation, provided, however, that such standards shall not be less than the minimum federal standards. The initial such amendments to such standards and implementation plan shall postpone the achievement dates for the primary and secondary ambient air quality standards to the latest dates permitted pursuant to federal law. Any compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation adopted pursuant to such standards or implementation plan shall be amended to conform to such amended standards and implementation plan upon petition of the owner or operator of a facility whose construction, maintenance or operation is affected by such compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation. The department shall, after opportunity for public hearing, issue a final order with respect to the subject matter of such petition within sixty days of the filing of the petition.

In any standard, implementation plan, compliance schedule, emission limitation, for new or existing facilities, order, rule, plan or regulation where the sulphur or ash content, or other chemical or physical characteristic of fuels or emissions therefrom is subject to consideration by the department, the department shall allow stack height, fuel switching and variations in plant operation to be used instead of controls on such sulphur or ash content or chemical or physical characteristic of such fuels or emissions therefrom if the owner or operator of the facility shall demonstrate to the satisfaction of the department that such controls are not necessary to achieve ambient air quality standards; provided, however, the department may impose conditions necessary to minimize public nuisance and adverse effects to the public health. If a variance or other permission granted by the department with respect to the sulphur or ash content, or other chemical or physical characteristic of fuels or emissions therefrom would otherwise prevent the achievement of primary or secondary federal ambient air quality standards within a time period required by the express language of a federal statute or regulation such variance or other permission shall be limited to the maximum time period allowed by federal law.

Added by St.1969, c. 836. Amended by St.1974, c. 494, § 1.

§ 142E. Air pollution; preventing and controlling by departments, agencies, commissions, authorities and political subdivisions

Any department, agency, commission, authority or political subdivision of the commonwealth having control and supervision over any building, installation or other property shall cooperate with the department of environmental quality engineering in preventing and controlling pollution of the air insofar as the discharge of any matter from or by such building, installation or other property may cause or contribute to air pollution.

All departments, agencies, commissions, authorities and political subdivisions shall be subject to rules and regulations adopted by the department pursuant to sections one hundred and forty-two A to one hundred and forty-two C, inclusive. The department may serve upon any such department, agency, commission, authority or political subdivision an order to cease and desist from violating such rules or regulations. If objection to such order is made within ten days, the department, agency, commission, authority or political subdivision so objecting shall be entitled to a hearing before a person designated by the commissioner whose recommendations when adopted, or amended and adopted, by the department of environmental quality engineering shall be a final decision within the meaning of section fourteen of chapter thirty A, subject to judicial review as therein provided. If such order is violated the department may file a bill of complaint in the superior court to enjoin such violation; provided, however, that in such a proceeding the sole questions in issue shall be (1) was the order of the department violated and (2) is the relief sought appropriate.

Added by St.1970, c. 838. Amended by St.1972, c. 359, § 2; St.1975, c. 706, §§ 177, 178.

§ 142F. Discharging excess fuel from aircraft into atmosphere; penalty; definitions

Whoever, except in an emergency, allows excess fuel to be discharged into the atmosphere from an aircraft shall be punished by a fine of not less than two hundred and fifty dollars nor more than seven hundred and fifty dollars. As used in this section "excess fuel" shall mean that quantity of unused fuel which collects in "drain cans" from the engines of aircraft following the starting up or the shutting off of such engines, and "drain can" shall mean that receptacle located below or adjacent to an aircraft engine in which unused fuel collects or is collected when the engine is not in operation or just after the engine has been put into operation.

Added by St.1971, c. 1013, § 1.

§ 142G. Burning of Christmas trees restricted

Notwithstanding the provisions of sections one hundred and forty-two A and one hundred and forty-two B, any person may burn Christmas trees during the period from December twenty-sixth to January seventh in each year, provided that said person obtains a permit from the head of the fire department of the city or town wherein such burning shall take place and provided further that such burning is conducted under the supervision and control of said head of the fire department.

Added by St.1974, c. 239.

§ 142H. Ceremonial bonfires restricted; permits

The city council of a city with the approval of its mayor, or the board of selectmen or town council of a town, may authorize the fire department of such city or town to issue not more than one permit in any one year for a ceremonial bonfire in such city or town. Said ceremonial bonfire shall mark the observance of a significant municipal, state, or national event, and any such ceremonial bonfire shall be under the continuous supervision of the fire department. A permit for such a ceremonial bonfire shall be issued only to a municipal department or a civic, fraternal or veterans organization within such city or town. Only wood which has not been painted, impregnated, or otherwise treated with any foreign substance shall be permitted to burn in ceremonial bonfires. No ceremonial bonfire shall burn for more than twelve hours.

Added by St.1975, c. 99.

§ 142*l*. Bonfires from July 2 to July 6 authorized

Notwithstanding any provision of sections one hundred and forty-two A and one hundred and forty-two B, and in addition to the ceremonial bonfires permitted under the provisions of section one hundred and forty-two H, any civic, fraternal, veteran, community, or business organization may build and ignite bonfires under the supervision and control of the fire department of the city or town in which such burning takes place during the period from July second to July sixth in each year. A permit for such bonfire shall be obtained by such organization from the head of the fire department upon his determination that such organization will conduct such burning in a proper and responsible manner.

Added by St.1976, c. 77.

NOISOME TRADES

§ 143. Trade or employment attended with noisome and injurious odors; assignment of places; prohibition; appeal

No trade or employment which may result in a nuisance or be harmful to the inhabitants, injurious to their estates, dangerous to the public health, or may be attended by noisome and injurious odors shall be established in a city or town except in such a location as may be assigned by the board of health thereof after a public hearing has been held thereon, subject, however, to the provisions of any ordinance or bylaw adopted therein under sections twenty-five to thirty A, inclusive, of chapter forty, or corresponding provisions of earlier laws, and such board of health may prohibit the exercise thereof within the limits of the city or town or in places not so assigned, in any event. Such assignments shall be entered in the records of the city or town, and may be revoked when the board shall think proper.

The department of environmental quality engineering shall advise, upon request, the board of health of a city or town previous to the assignment of places for the exercise of any trade or employment referred to in this section, and any person, including persons in control of any public land, aggrieved by the action of the board of health in assigning certain places for the exercise of any trade or employment referred to in this section may, within sixty days, appeal from the assignment of the board of health to the department and said department may, after a hearing rescind, modify or amend such assignment.

Amended by St.1933, c. 269, § 2; St.1948, c. 480, § 1; St.1956, c. 275, § 1; St.1975, c. 706, § 179.

§ 144. Revocation of assignment; removal of nuisance

If a place or building so assigned becomes a nuisance by reason of offensive odors or exhalations therefrom, or is otherwise hurtful or dangerous to the neighborhood or to travelers, the superior court may, on complaint of any person, revoke such assignment, prohibit such further use of such place or building, and cause the nuisance to be removed or prevented.

§ 145. Damages

Whoever is injured in the comfort or enjoyment of his estate by such nuisance may recover in tort the damages sustained thereby.

§ 146. Orders of prohibition; service

Orders of prohibition issued under section one hundred and forty-three shall be served by an officer qualified to serve civil process upon the occupant or person having charge of the premises where such trade or employment is exercised, and the board shall take all necessary measures to prevent such exercise. Whoever refuses or neglects for twenty-four hours thereafter to obey the same shall forfeit not less than fifty nor more than five hundred dollars.

§ 147. Appeal from order; notice; trial

Whoever is aggrieved by an order made under section one hundred and forty-three or one hundred and fifty-two may, within three days after service of the order upon him, give written notice of appeal to the board or department of environmental quality engineering, and file a petition for a jury in the superior court in the county where the premises affected are located, and, after notice to the board or department of environmental quality engineering, may have a trial in the same manner as other civil cases are tried by jury. If by mistake of law or fact or by accident he fails within said three days to apply as aforesaid, and if it appears to the court that such failure was caused by such mistake or accident, and that he has not, since the service of such order upon him, violated it, he may within thirty days after the service of the order upon him apply for a jury.

Amended by St.1948, c. 480, § 2; St.1975, c. 706, § 180.

§ 148. Exercise of trade or employment during pendency of proceedings

Such trade or employment shall not be exercised contrary to the order while such proceedings are pending, unless specially authorized by the board; and if so specially authorized all further proceedings by the board shall be stayed while such proceedings are pending. Upon any violation of the order, unless specially authorized as aforesaid, the proceedings shall forthwith be dismissed.

§ 149. Verdict; effect

The verdict may alter, affirm or annul the order, and shall be returned to the court for acceptance; and if accepted, shall have the authority and effect of a valid order of the board, and may also be enforced by the court in equity.

§ 150. Damages and costs

If the order is affirmed by the verdict, the board shall recover costs to the use of the town; if it is annulled and the petitioner has not been specially authorized by said board to exercise such trade or employment during the proceedings, he shall recover damages and costs against the town; if it is annulled and the petitioner has been specially authorized as aforesaid, or if it is altered, he shall not recover damages, and the court may render judgment for costs in its discretion.

§ 150A. Private and public dumping grounds; assignment of place; appeal; public hearing; maintenance and operation; enforcement; fee; ash, permitted uses and disposal

As used in this section, "facility" means a sanitary landfill, a refuse transfer station, a refuse incinerator with a grate area in excess of ten square feet, a refuse composting plant, a residual waste storage or treatment plant, a dumping ground for refuse or any other works for treating or disposing of refuse; and "refuse" means all solid or liquid waste materials, including garbage and rubbish, sludge and residual waste, but not including sewage.

No place in any city or town shall be established or maintained or operated by any person, including any political subdivision or agency of the commonwealth, as a site for a facility, unless such place has either been assigned by the board of health of such city or town as a site for a facility after a public hearing, subject to the provisions of any ordinance or by-law adopted therein under chapter forty A or corresponding provisions of earlier laws, or, in the case of an agency of the commonwealth, has been assigned by the department of environmental quality engineering in this section called the department after a public hearing and unless public notice of such assignment has been given by the board of health. The assignment of a place as a site for a facility shall be subject to such limitation with respect to the extent, character and nature of operation thereof as may be necessary to protect the public health, comfort and convenience. The department shall advise upon request, any board of health previous to the assignment of a place as a site for a facility.

If such facility is a landfill owned or operated by any person other than a town or an agency of the commonwealth, such person shall pay to the town where the facility is located a fee of fifty cents for each ton of solid waste from outside such town which is disposed of in such landfill. Residue from a resource recovery facility located in the municipality wherein such landfill is located shall not be deemed to be solid waste for purposes of said payment. On or before the twentieth day of each month every such person shall file a return subscribed under the penalties of perjury with the board of health of the town in which such facility is located, on such form as the commissioner of environmental quality engineering, in this section called the commissioner, shall prescribe, giving such information as the commissioner shall require for determination of the fee imposed by this paragraph. Said fee shall be due and payable on or before the due date of the return.

Any person aggrieved by the action of a board of health in assigning a place as a site for a facility, including persons in control of any public land, the selectmen of any town, and in cities having a Plan D or Plan E charter the city manager, and in other cities the mayor, when authorized by vote of the city council, may, within sixty days of the publication of notice of such assignment, appeal to the department from the assignment of the board of health. Upon such appeal or upon the department's own initiative, the department may, after due notice and public hearing, rescind or suspend such assignment or modify the same by the imposition or amendment of conditions.

A facility shall not be constructed or operated unless the proposed use and the plans or design therefor have been approved by the department.

Every person, including every political subdivision of the commonwealth, maintaining or operating a facility, shall maintain and operate the same in such manner as will protect the public health, comfort and convenience and prevent a nuisance or a danger to the public health by reason of odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin, or other causes. Upon determination that the operation or maintenance of a facility results in a nuisance or a danger to the public health, such assignment may be rescinded or suspended or may be modified through the imposition or amendment of conditions, at any time after due notice and public hearing, by the board of health of the city or town where such facility is located, upon its own initiative or upon complaint by any person aggrieved by such assignment, or by the department, upon its own initiative or upon complaint by any person aggrieved by such assignment.

The department shall adopt and may from time to time amend rules and regulations, and the commissioner may issue orders, to enforce the provisions of this section. Any person, including any political subdivision of the commonwealth, who fails to operate and maintain a facility in accordance with the provisions of this section or in accordance with any rules, regulations, or orders hereunder promulgated shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. Each day's failure to comply with said provisions, rules, regulations or orders shall constitute a separate violation.

The superior court shall have jurisdiction in equity to enforce the provisions of this section upon petition of the department or any aggrieved person.

Ash produced from the combustion of coal, including but not limited to fly ash and bottom ash, shall not be construed as refuse, rubbish, garbage, or waste material under this section when used as a raw material for concrete block manufacture, aggregate, fill, base for road construction, or other commercial or industrial purpose, or stored for such use. A location where such use or storage takes place may be constructed, established, maintained, and operated without being construed as a facility or site for a facility under this section, and no assignment or approval from the board of health or the department shall be required for such construction, establishment, maintenance, or operation; provided, however, the department shall have jurisdiction to determine, after notice and hearing, that the establishment or operation of such a location has created a nuisance condition by reason of odor, dust, fires, smoke, the breeding or harboring of rodents, flies or vermin, or other causes, and to prevent or order abatement thereof; and provided, further, that no final disposal of ash produced by the combustion of coal may be accomplished by burial of such ash in the ground, other than as base for road construction or fill, unless the place where such disposal takes place has been assigned for such disposal by the board of health and plans for such disposal have been approved by the department pursuant to this section. The department may waive the requirements of the preceding paragraphs of this section and the application of any regulations, or portions thereof, promulgated under the preceding paragraphs of this section as they may apply to the disposal by burial of ash produced by the burning of coal, and shall review and may approve the plans, site and method of storage upon a determination that no nuisance is created and damage to the environment is minimal. Use of ash produced from the combustion of coal as intermediate cover material over rubbish at sanitary landfill facilities may be permitted by assignment of the board of health with approval of the department under this section.

Added by St.1955, c. 310, § 1. Amended by St.1969, c. 429; St.1969, c. 515, § 1; St.1970, c. 839; St.1973, c. 1217, § 6; St.1975, c. 500, § 4; St.1975, c. 706, §§ 181, 182; St.1976, c. 118; St.1978, c. 197, § 4.

§ 151. Slaughter houses; regulation; public hearing; application of section

No person shall occupy or use a building for carrying on the business of slaughtering cattle, horses, mules, sheep or other animals, or for a melting or rendering establishment, or for other noxious or offensive trade and occupation, or permit or allow said trade or occupation to be carried on upon premises owned or occupied by him, without first obtaining, after a public hearing has been held thereon, the written consent and permission of the mayor and city council, or of the selectmen, or, in any town having a population of more than five thousand, of the board of health, if any, of the town where the building or premises are situated. This section shall not apply to any building or premises occupied or used for said trade or occupation on May eighth, eighteen hundred and seventy-one; but no person who used or occupied any building or premises on said date for said trades or occupations shall enlarge or extend the same without first obtaining the written consent and permission of the mayor and city council or the selectmen, or, in any town having a population of more than five thousand, of the board of health, if any.

Amended by St.1943, c. 332, § 9; St.1956, c. 275, § 2.

§ 152. Prohibition of offensive trades or occupations

If any buildings or premises are so occupied or used, the department of environmental quality engineering shall, upon application, appoint a time and place for hearing the parties, and, after due notice thereof to the party against whom the application is made and a hearing, may, if in its judgment the public health, comfort or convenience so require, order any person to desist from further carrying on said trade or occupation in such buildings or premises; and no person shall thereafter continue so to occupy or use such buildings or premises. Whoever occupies or uses any building or premises in violation of this or the preceding section shall forfeit not more than two hundred dollars for every month of such occupancy or use and in like proportion for a shorter time.

Amended by St.1975, c. 706, § 183.

§ 153. Restraint of offensive trades or occupations

The superior court may restrain the unauthorized occupancy, use or extension of any building or premises occupied or used for the trades or occupations aforesaid, and enforce the orders of the department issued under the preceding section; but this and the two preceding sections shall not impair any other remedies against nuisances.

§ 154. Killing or rendering of horses; licenses; application; notice to director of animal health

A person engaged in or desiring to engage in the business of killing horses, or in the rendering of horses or other animals, shall annually in March apply for a license to the board of health of the town where such business is to be carried on. The application shall be in writing and signed by the persons desiring to carry on such business, or, if the applicant is a corporation, by a duly authorized officer thereof. It shall state the names in full and the addresses of all persons desiring to carry on such business, or, if a corporation is the applicant, the names of all its officers, and the street or other place where the business is to be conducted. The board of health of a town may grant such licenses after it is satisfied that the applicants have a suitable building and plant in a situation approved by said board, and that they have suitable trucks or wagons for the removal of dead animals. The license shall state the name of the licensee, the situation of the building or establishment where the business is to be carried on, and shall continue in force until April first of the year next ensuing unless sooner revoked. The board of health shall keep a record of such licenses granted by it, and shall notify the director of animal health of the granting of any such license, giving the name and address of the licensee. The fee for a license shall not exceed one dollar, and a license may be revoked at any time by the board of health. Licensees shall report to the director of animal health, in such form and at such times as he may order, every animal received by them which is infected with a contagious disease. No unlicensed person shall carry on the business of killing horses or of rendering horses or other animals. So much of section thirty of chapter one hundred and twenty-nine as provides that no person shall knowingly sell an animal with a contagious disease shall not apply to any person who sells such animal to a licensee under this section, if such animal is to be killed or rendered at the establishment of such licensee. Whoever violates this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than three months, or both.

Amended by St.1934, c. 340, § 9; St.1967, c. 347, §§ 4, 5.

STABLES

§ 155. Licensing of stables in cities and large towns

No person shall erect, occupy or use for a stable any building in a city, or in a town having more than five thousand inhabitants, unless such use is licensed by the board of health, and, in such case, only to the extent so licensed. This section shall not prevent any such occupation and use authorized by law on May fourth, eighteen hundred and ninety-five, to the extent and by the person so authorized, but the board of health of such a city or town may make such regulations or orders as, in its judgment, the public health requires relative to drainage, ventilation, size and character of stalls, bedding, number of animals and storage and handling of manure in any stable in its city or town.

§ 156. Stables in vicinity of churches

No person shall in a city occupy or use a building for a livery stable, or a stable for taking or keeping horses and carriages for hire or to let, within two hundred feet of a church or meeting house erected and used for the public worship of God, without the written consent of the religious society or parish worshipping therein; but this section shall not prevent such occupation and use if authorized by law on May seventeenth, eighteen hundred and ninety-one, to the extent then authorized.

§ 157. Penalty for violation of sections 155 and 156

Whoever violates any provision of the two preceding sections or of a regulation or order made thereunder shall be punished by a fine of five dollars for each day such violation continues.

§ 158. Licensing of stables in small towns; revocation

The selectmen of towns having a population of five thousand or less may license suitable persons to keep more than four horses in specified buildings or places within their respective towns, and may revoke such licenses at pleasure. Whoever, not being licensed as aforesaid, occupies or uses a building or place for a stable for more than four horses shall forfeit not more than fifty dollars for every month he so occupies or uses such building or place, and in like proportion for a shorter time. The superior court may restrain the erection, occupancy or use of stables contrary to this section or section one hundred and fifty-five or one hundred and fifty-six.

WATER SUPPLY

§ 159. Supervision of inland waters

The department of environmental quality engineering, in this section and sections one hundred and sixty to one hundred and sixty-six, inclusive, called the department, shall have the general oversight and care of all inland waters and of all streams, ponds and underground waters used by any city, town, water supply or fire district or public institution or by any water or ice company or any person in the commonwealth as sources of ice or water supply and of all springs, streams and watercourses tributary thereto. It shall be provided with maps, plans and documents suitable for such purposes, and shall keep records of all its transactions relative thereto. It shall give notice to the attorney general of any violation of law relative to the pollution of water supplies and inland waters.

Amended by St.1951, c. 448, § 2; St.1975, c. 706, § 184.

§ 160. Examinations of water supply; rules to prevent pollution; permits

The department may cause examinations of such waters to be made to ascertain their purity and fitness for domestic use, or the possibility of their impairing the interests of the public or of persons lawfully using them or of imperilling the public health. It may make rules and regulations and issue such orders as in its opinion may be necessary to prevent the pollution and to secure the sanitary protection of all such waters used as sources of water supply and to ensure the delivery of a fit and pure water supply to all consumers. It may delegate the granting and withholding of any permit required by such rules or regulations to state departments, boards and commissions and to selectmen in towns, and to boards of health, water boards and water commissioners in cities and towns, to be exercised by such selectmen, departments, boards and commissions, subject to such recommendation and direction as shall be given from time to time by the department; and upon complaint of any person interested, the department shall investigate the granting or withholding of any such permit, and make such orders relative thereto as it may deem necessary for the protection of the public health and to restrain the use of such waters to the extent as in its opinion such use will tend to adversely affect the public health. Whoever violates any such orders, rules or regulations shall be punished by a fine of not more than five hundred dollars, to the use of the commonwealth, or by imprisonment for not more than one year, or both.

Amended by St.1951, c. 448, § 3; St.1977, c. 526, §§ 3, 3A.

§ 160A. Cross connections between water supplies; permits; penalty

No physical cross connection shall be maintained between the distribution system of a public water supply, the water of which is used for drinking, domestic or culinary purposes, and the distribution system of any water supply not approved by the department as being of safe sanitary quality, unless said connection has been approved by the department in accordance with rules and regulations adopted for the purpose, and unless a permit therefor has been issued by the department. Such permit may be issued upon the application of a person maintaining such connection and upon the payment of a fee of ten dollars, and may be renewed annually upon payment of a like fee. When more than one such connection is maintained on any premises a separate permit shall be required for each connection. A permit may be revoked by the department upon due notice to the person maintaining the connection whenever, in the opinion of the department, the connection or the maintenance thereof no longer complies with its rules and regulations, and no portion of the permit fee shall be refunded.

Whoever maintains such a connection without a permit or after revocation of the permit to maintain such connection shall be punished by a fine of not more than five hundred dollars, to the use of the commonwealth, or by imprisonment for not more than one year, or both.

Added by St.1960, c. 613.

§ 160B. Water quality violations; orders of department of environmental quality engineering; enforcement

The department shall immediately report any violations of standards or regulations regulating the quality of water used for drinking, domestic or culinary purposes to the department of public health. If the department of public health ascertains from its own inspection or from the report of the department that there is a violation of those regulations or standards which may endanger the public health, it may order the appropriate party to cease violating the regulation and to take whatever steps are necessary to purify the water. If any such order of the department of public health conflicts with any order of the department the order of the department of public health shall take precedence. Such an order will be enforceable by the superior court sitting in equity upon the petition of the department of public health.

Added by St.1975, c. 706, § 185.

§ 161. Repealed by St.1961, c. 48

§ 162. Removal of causes of pollution; petition; hearing; notice; damages; violation of order

Upon petition to the department by the mayor of a city or the selectmen of a town, the managing board or officer of any public institution, or by a board of water commissioners, or the president of a water or ice company, stating that manure, excrement, garbage, sewage or any other matter pollutes or tends to pollute the waters of any stream, pond, spring, underground waters, or watercourse used by such city, town, institution or company as a source of water supply, the department shall appoint a time and place within the county where the nuisance or pollution is alleged to exist for a hearing, and after notice thereof to parties interested and a hearing, if in its judgment the public health so requires, shall, by an order served upon the party causing or permitting such pollution, prohibit the deposit, keeping or discharge of any such cause of pollution, and shall order him to desist therefrom and to remove any such cause of pollution; but the department shall not prohibit the cultivation and use of the soil in the ordinary methods of agriculture if no human excrement is used thereon. The department shall not prohibit the use of any structure in existence on June eleventh, eighteen hundred and ninety-seven, upon a complaint made by the board of water commissioners of any town or by any water or ice company unless such board of water commissioners or company files with the department a vote of its city council, selectmen or company that such town or company will at its own expense make such changes in said structure or its location as said department shall deem expedient. Such vote shall be binding on such town or company. All damages caused by such changes shall be paid by such town or company; and if the parties cannot agree thereon, the damages may be recovered under chapter seventy-nine. Whoever violates such an order shall be punished by a fine of not more than five hundred dollars, to the use of the commonwealth, or by imprisonment for not more than one year, or both.

Amended by St.1951, c. 448, § 4.

§ 163. Appeal

Whoever is aggrieved by an order made under section one hundred and sixty or section one hundred and sixty-two may appeal therefrom as provided in section one hundred and forty-seven; but such notice as the court shall order shall also be given to the board of water commissioners and mayor, or chairman of the selectmen, or president or other officer of the water or ice company interested in such order. While the appeal is pending the order of the department shall be complied with, unless otherwise authorized by it.

Amended by St.1951, c. 448, § 5.

§ 164. Enforcement of orders, rules and regulations

The supreme judicial or superior court, upon the application of the department or of any party interested, may enforce the orders, rules and regulations of said department, and restrain the use or occupation of the premises or such portion thereof as said department may specify on which the material is deposited or kept, or such other cause of pollution exists, until the orders, rules and regulations of the department have been complied with.

§ 165. Entry on premises; compensation of agents; apportionment

The agents and servants of the department may enter any building, structure or premises to ascertain whether sources of pollution or danger to the water supply there exists, and whether the rules, regulations and orders aforesaid are obeyed. Their compensation for services rendered in connection with proceedings under section one hundred and sixty-two shall be fixed by the department, and shall in the first instance be paid by the commonwealth; but the whole amount so paid shall, at the end of each year, be justly and equitably apportioned by the commissioner of revenue between such towns or companies as, during said year, have instituted said proceedings, and may be recovered in an action by the state treasurer, with interest from the date of demand.

Amended by St.1978, c. 514, § 195.

§ 166. Repealed by St.1977, c. 526, § 4

§ 167. Protection of sources of water supply

No sewage, drainage, refuse or polluting matter, of such kind and amount as either by itself or in connection with other matter will corrupt or impair the quality of the water of any pond or stream used as a source of ice or water supply by a town, public institution or water company for domestic use, or render it injurious to health, and no human excrement, shall be discharged into any such stream or pond, or upon their banks if any filter basin so used is there situated, or into any feeders of such pond or stream within twenty miles above the point where such supply is taken.

§ 168. Prescriptive rights of drainage; application of section 167

The preceding section shall not destroy or impair rights acquired by legislative grant prior to July first, eighteen hundred and seventy-eight, or destroy or impair prescriptive rights of drainage or discharge to the extent to which they lawfully existed on that date; nor shall it be applicable to the Merrimack or Connecticut rivers, or to so much of the Concord river as lies within the limits of Lowell.

§ 169. Injunction against pollution of water supply

The supreme judicial or superior court, upon application of the mayor of a city, the selectmen of a town, the managing board or officer of a public institution, or a water or ice company which is interested, may enjoin the violation of section one hundred and sixty-seven.

§ 170. Defilement of spring or source of water

Whoever wilfully and maliciously defiles or corrupts any spring or other source of water, or reservoir, or destroys or injures any pipe, conductor of water or other property pertaining to an aqueduct, or aids or abets in any such trespass, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year.

§ 171. Wilful defilement of sources of water supply

Whoever wilfully deposits excrement or foul or decaying matter in water used for domestic water supply, or upon the shore thereof within five rods of the water, or whoever bathes in such water shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month. A police officer or constable of a town where such water is wholly or partially situated, acting within the limits of such town, and any executive officer or agent of a water board, board of water commissioners, public institution or water company furnishing water or ice for domestic purposes, acting upon the premises of such board, institution or company and not more than five rods from the water, may without a warrant arrest any person found in the act of violating this section and detain him in some convenient place until a complaint can be made against him therefor. The provisions of this section shall not interfere with the sewage of a town or public institution, or prevent the enrichment of land for agricultural purposes by the owner or occupant thereof.

Amended by St.1975, c. 384.

§§ 172, 173. Repealed by St.1975, c. 384

§ 173A. Police employed to protect water supply; powers and duties

Police employed by the water board or board of water commissioners of a city, town or water district, a public institution or water company, and duly appointed in one of the cities or towns within an area from which water is being supplied under the direction of such board, institution or company, or over which such board, institution or company has control, or where such water is furnished by such city, town, district, institution or company shall within and throughout any or all of such areas have all the powers and duties of police officers of cities and towns.

Added by St.1938, c. 293.

§ 173B. Entry upon premises within water shed of source of water supply

Any water board or board of water commissioners of a city, town or water district and any executive officer or agent of any such board or of a public institution or water company furnishing water for domestic purposes, and any police officer employed by such a water board, board of water commissioners, public institution or water company, may enter any premises except dwelling houses within the water shed of the source of water supply of such city, town, district, institution or company to ascertain whether the provisions of this chapter relative to water supply and the rules and regulations adopted under section one hundred and sixty are being obeyed.

Added by St.1943, c. 84.

§ 174. Driving animal on ice of pond or stream used for domestic water supply

Whoever, not being engaged in cutting or harvesting ice, or in hauling logs, wood or lumber, drives any animal on the ice of a pond or stream used for domestic water supply for a town shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month.

§ 174A. Prevention of defilement of domestic water supply by gulls or terns

In order to preserve the purity and prevent the pollution of the waters of any reservoir, pond, stream or standpipe used for domestic water supply by the metropolitan water district or by a town, water supply or fire and water district, public institution or water company, the public board or commission, or the governing board in case of a water company, having control of such waters may authorize one or more of its employees, so far as permissible under federal law, to take such reasonable means and use such appliances and weapons as, in the judgment of such public board or commission, or governing board, as the case may be, will prevent the defilement of said waters by gulls or terns, any provision of chapter one hundred and thirty-one to the contrary notwithstanding. Every such public board or commission and governing board shall keep an accurate account of all birds killed by its employees under authority of this section and submit such account to the director of the division of fisheries and wildlife of the department of fisheries, wildlife and recreational vehicles at such times and covering such periods as he may prescribe.

Amended by St.1975, c. 706, § 186.

PROTECTION OF CHARLES RIVER

§ 175. Protection of Charles river from pollution

The department of environmental quality engineering, in this section called the department, shall make reasonable orders, having due regard for the particular circumstances of each case, prohibiting the entrance or discharge of sewage into any part of the Charles river or its tributaries, and preventing the entrance or discharge therein of any other substance which may be injurious to the public health or may tend to cause an offensive odor or to create a public nuisance or to obstruct the flow of water or to diminish the public use or enjoyment of said river, its tributaries, or adjacent areas, including all waste or refuse from any factory or other establishment where persons are employed. Any finding of fact made by the department in making such an order shall be prima facie evidence in any proceeding to enforce such order. The department shall consult and advise with the owner of any factory or establishment, or with any municipality, discharging any substance into the Charles river or any of its tributaries, at his or its request or of the department's own motion, as to the best practicable and reasonably available method of making such substance harmless. The supreme judicial and the superior court shall have jurisdiction in equity to enforce any order made by the department hereunder. Proceedings to enforce any such order shall be instituted and prosecuted by the attorney general upon the request of the department. Whoever violates any order of the department made under authority of this section shall be punished by a fine of not less than twenty-five or more than one thousand dollars. Nothing herein shall affect any powers of the metropolitan district commission under section thirty-nine or seventy-six of chapter ninety-two.

Amended by St.1941, c. 353; St.1963, c. 453; St.1975, c. 706, § 187.

QUARANTINE

§§ 176 to 180. Repealed by St.1938, c. 265, § 17

VACCINATION

§ 181. Enforcement of vaccination of inhabitants of towns

Boards of health, if in their opinion it is necessary for public health or safety, shall require and enforce the vaccination and revaccination of all the inhabitants of their towns, and shall provide them with the means of free vaccination. Whoever refuses or neglects to comply with such requirement shall forfeit five dollars.

§ 182. Vaccination of inmates of institutions supported by aid of commonwealth

The board of health of a town where any incorporated manufacturing company, infirmary, training or industrial school, hospital or other establishment where the poor or sick are received, prison, jail or house of correction, or any institution supported or aided by the commonwealth, is situated may, if it decides that it is necessary for the health of the employees or inmates or for the public safety, require the authorities of said establishment or institution, at the expense thereof, to cause all said employees or inmates to be vaccinated.

§ 183. Exemptions

Any person over eighteen presenting a certificate, signed by the register of a probate court, that he is under guardianship shall not be subject to section one hundred and eighty-one; and any child presenting a certificate, signed by a registered physician designated by the parent or guardian, that the physician has at the time of giving the certificate personally examined the child and that he is of the opinion that the physical condition of the child is such that his health will be endangered by vaccination, shall not, while such condition continues, be subject to the two preceding sections.

Amended by St.1973, c. 925, § 15.

MISCELLANEOUS PROVISIONS

§ 184. Establishment and maintenance of bacteriological laboratories

In order to better preserve public health and secure greater accuracy in the diagnosis of communicable diseases, county commissioners may establish and maintain bacteriological laboratories, or provide such laboratory facilities for their respective counties as they deem advantageous, and may expend necessary sums therefor. No expenditures shall be made under this section until the laboratories or the laboratory facilities established or provided in accordance herewith have been inspected and approved by the department.

§ 184A. Certificates of approval relative to bacteriological laboratories; rules and regulations; renewals; fees

The department, at the request of any person owning or operating a bacteriological laboratory, may issue a certificate of approval of the performance at such laboratory of bacteriological or serological tests set forth in such certificate; provided, that no such certificate shall be granted hereunder except in accordance with such suitable and reasonable rules and regulations as the department shall establish; authority to establish, and from time to time to alter and amend, such rules and regulations being hereby granted to the department. Rules and regulations governing approval of such bacteriological laboratories made under authority hereof may include provisions relative to the location and equipment of such laboratories, the personal and professional qualifications of the personnel thereof, and the methods employed thereat. The department may from time to time submit to, or request from, any such laboratory such specimens for examination as it may deem necessary to determine whether or not such laboratory can properly perform such tests. Certificates of approval issued under authority hereof shall be valid for one year from their dates of issue and may be annually renewed. The fee for the issue, and for each annual renewal, of every such certificate shall be five dollars; provided, that no such fee shall be charged or collected on account of any such laboratory established and maintained by the commonwealth or by any political subdivision thereof. Any such certificate may be revoked by the department, after thirty days' notice to such laboratory and the opportunity to be heard by the department, if in its judgment the public interest so requires.

For the purposes of this section, a bacteriological laboratory is defined to be a place or establishment advertised, and maintained or purported to be maintained, in whole or in part, for the purpose of accepting for and subjecting to bacteriological or serological study or analysis, or both, specimens of blood, sputum, urine, feces or other fluids, secretions or excretions of the body of persons ill, or suspected of being ill, with a disease dangerous to the public health, or of the body of persons who are to serve as donors or recipients of blood or derivatives of blood.

The department is hereby further authorized to grant certificates of approval for laboratory tests upon milk, foods, eating utensils, water and sewage in accordance with such rules and regulations as the department may establish under the authority granted above. Only one certificate and one fee shall be required for all of the tests mentioned in this section.

Added by St.1939, c. 344. Amended by St.1946, c. 155, §§ 1, 2.

§ 184B. Blood banks

No blood banks, so-called, shall be established and maintained in this commonwealth except by a hospital licensed by the department under the provisions of section seventy-one or by the American Red Cross or by the Center for Blood Research, Inc. Any violation of this section shall be punished by a fine of not more than five hundred dollars.

Added by St.1950, c. 431. Amended by St.1950, c. 431; St.1967, c. 528; St.1973, c. 262.

§ 184C. Donation by minors

A minor eighteen years of age or older may donate his blood without the prior assent thereto by his parent or guardian.

Added by St.1969, c. 641.

§ 185. Disinfecting public mutoscopes and other apparatus

The proprietor or manager of any place of public amusement or other place where there are provided for public use and entertainment mutoscopes or any other machine or apparatus of such nature that the person using the same breathes or speaks into it, or, to see or hear, holds any part thereof in contact with or near to his eyes or ears, shall disinfect the same, in such manner as shall be approved by the board of health, at least twice during such hours, in every twenty-four hours, as the machine or apparatus is offered for use by the public. This section shall not apply to telephones.

§ 185A. Rules of instruction, test cards and other appliances

The department of public health, after consultation with the department of education, shall prescribe and furnish to school committees suitable rules of instruction, test cards, blanks, record books and other useful appliances for accomplishing the purposes of sections fifty-three to fifty-seven, inclusive, of chapter seventy-one and may furnish said material to such boards of health as may require it in the performance of their duties. The department may provide for pupils in the teachers colleges instruction and practice in the best methods of testing the sight and hearing of children.

Added by St.1945, c. 543, § 2.

§ 186. Public use of machines requiring application of lips

No person shall provide for public use or entertainment in any place of public amusement or other place of public resort any so-called lung testing machine or similar contrivance the use of which requires the application of any part thereof to the lips. Violations of this or the preceding section shall be punished by a fine of not more than twenty-five dollars.

§ 186A. Shoe-fitting machines; restrictions on use; penalty

No person shall operate or maintain a shoe-fitting device or machine which uses fluoroscopic, X-ray or radiation principles, except for diagnostic or therapeutic purposes by or under the direction of a physician or podiatrist registered under the laws of the commonwealth. Violations of this section shall be punished by a fine of not more than twenty-five dollars.

Added by St.1958, c. 79, § 2. Amended by St.1970, c. 443, § 16.

§ 186B. Sale or offering for sale of "flammable" fabric or related material to be used in manufacture, or sold as items, of children's sleepwear prohibited; penalties

It shall be unlawful to sell or offer for sale any fabric or related material or finished piece of clothing which is designed to be used in the manufacture, or sold as items, of children's sleepwear up to and including size 14, when such fabric or related material or finished piece of clothing shall be defined as "Flammable" under the provisions of chapter ninety-four B. Whoever himself or by his servant or agent, violates any provision of this section shall, for the first offense, be punished by a fine of not less than fifty nor more than two hundred dollars; and, for the second or subsequent offense, by a fine of nor less than two hundred nor more than one thousand dollars, or by imprisonment for not more than ninety days, or both.

Added by St.1973, c. 649, § 3.

§ 187. Enforcement of chapter

The supreme judicial or superior court, upon the application of the board of health of a town, may enforce the orders of said board relative to public health. Sections eleven and twelve of chapter two hundred and fourteen shall apply to such cases; but a jury may be summoned under said sections, if there is no sitting of the court, within one month after issues have been framed.

Amended by St.1973, c. 1114, § 7.

§ 188. Disposition of fines and forfeitures

Fines and forfeitures incurred under the general laws, the special laws applicable to a town, or the ordinances, by-laws and regulations of a town, relative to health, shall enure to the use of such town except where the forfeiture is incurred by said town.

§ 189. Application of chapter to cities

Unless the context otherwise requires, the provisions of this chapter shall apply to cities so far as consistent with their several charters.

LEAD POISONING PREVENTION AND CONTROL

§ 190. Statewide program; director; advisory committee

The department shall establish a statewide program for the prevention, screening, diagnosis and treatment of lead poisoning, including elimination of the sources of such poisoning, through such research, educational, epidemiological and clinical activities as may be necessary.

The commissioner shall appoint a lead poisoning control director, who shall serve at the pleasure of the commissioner. The director shall be responsible, subject to the authority of the commissioner, for carrying out and administering all programs created pursuant to this and the following nine sections. As used in the following nine sections, "Director" shall refer to the lead poisoning control director.

The director may contract with any agencies, individuals or groups for the provision of necessary services, subject to appropriation; and shall issue and from time to time, amend, such rules and regulations as may be necessary.

The governor shall appoint an advisory committee for the lead poisoning prevention program, which shall consist of nine members, at least four of whom shall be physicians or persons active in the field of public health and who shall serve at the pleasure of the governor. At least two members of said advisory committee shall be parents of children under six years of age who reside in lower-income urban areas. The committee shall advise the director on matters of policy; shall be consulted by the director prior to the issuance of rules and regulations; and shall perform such other duties as the director may request. The members of the advisory committee shall not be paid for their services, but they shall be reimbursed for travel and other expenses necessary for the performance of their duties. As used in the following nine sections, "advisory committee" shall refer to said committee.

Added by St.1971, c. 1081, § 1.

§ 191. Reports of lead poisoning; notifications to agencies; records

Any examining physician, hospital, public health nurse or other diagnosing person or agency shall report to the director the existence and circumstances of each case of lead poisoning known to them and not previously reported. Such reports shall be made on forms prescribed by the director, and shall be submitted not later than three days after said person or agency first diagnoses or is informed of such case. The director shall by regulation with the advice of the advisory committee and in accordance with sound medical practice define the terms "lead poisoning" and "previously reported".

When a case of lead paint poisoning is reported to the director, he shall inform such local boards of health, public health agencies and other persons and organizations as he deems necessary; provided, however, that the name of any individual contracting lead poisoning shall not be included unless the director determines that such inclusion is necessary to protect the health and well-being of the affected individual.

The director shall maintain comprehensive records of all reports submitted pursuant to this section. Such records shall be geographically indexed in order to determine the location of areas of relatively high incidence of lead poisoning. Such records shall be public records, subject to the provision of the preceding paragraph relating to the names of individuals.

Added by St.1971, c. 1081, § 1.

§ 192. Educational and publicity program

The director shall institute an educational and publicity program, in order to inform the general public, and particularly parents of children residing in areas of significant exposure to sources of lead poisoning; teachers, social workers and other human service personnel; owners of residential property, particularly property constructed previous to the year nineteen hundred and forty-five; and health services personnel, and particularly interns, residents and other intake personnel at major hospitals, of the dangers, frequency, and sources of lead poisoning, and the methods of preventing such poisoning.

Added by St.1971, c. 1081, § 1.

§ 193. Early diagnosis program; examination and reports; records

The director shall establish a program for early diagnosis of cases of lead poisoning. Such program shall, to the extent permitted by appropriations, systematically examine all children under six years of age residing within the commonwealth for the presence of lead poisoning. Such examinations shall be made by such means and at such intervals as the director shall by regulation determine may be medically necessary and proper. Such program shall employ, to the extent possible, residents of the areas in which screening and examinations are conducted, which residents shall not be subject to the provisions of chapter thirty-one, unless required as a condition for receipt of federal funds, or section nine A of chapter thirty.

Such program of diagnosis shall, to the extent that all children residing in the commonwealth are not systematically examined, give priority in examinations to those children residing, or who have recently resided, in areas were significant numbers of lead poisoning cases have recently been reported or where other reliable evidence indicates that significant numbers of lead poisoning cases may be found.

When the director is informed of a case of lead poisoning pursuant to section one hundred and ninety-one, or otherwise, he shall cause to have examined all other children under six years of age, and such other children as he may find advisable to examine, residing or recently residing in the household of the victim, unless the parents of such child object to said examination because it conflicts with their religious beliefs and practices. The results of such examinations shall be reported to the director, to the person or agency reporting the original case pursuant to section one hundred and ninety-one, and to such other persons or agencies as the director deems advisable.

The director shall maintain comprehensive records of all examinations conducted pursuant to this section. Such records shall be geographically indexed in order to determine the location of areas of relatively high incidence of lead poisoning. Such records shall be public records, subject to the provision of section one hundred and ninety-one relating to the names of examined individuals. A summary of the results of all examinations conducted pursuant to this section shall be released quarterly, or more frequently if the director so determines, to all interested parties.

All cases or probable cases of lead poisoning, as defined by regulation by the director, found in the course of examinations conducted pursuant to this section shall be reported immediately to the affected individual, to his parent or legal guardian if he is a minor, and to the director. The director shall inform such persons or agencies as he deems advisable of the existence of such case or probable case, subject to the provision of section one hundred and ninety-one relating to the names of individuals.

Added by St.1971, c. 1081, § 1.

§ 194. Detection of sources of lead poisoning; inspection; search warrant; notice to interested parties; examination of children; reports; records

The director shall establish a comprehensive program for detection of sources of lead poisoning. Such program shall attempt, to the extent permitted by appropriations, to locate all dwellings in which the paint, plaster or other accessible substance contains dangerous amounts of lead. The means of detection, and the amount of lead that produces the danger of lead poisoning, shall be determined by regulation by the director in accordance with sound medical practice and current technical knowledge.

Such program of detection shall, to the extent that all appropriate dwellings are not inspected, give priority in inspections to those dwellings located in areas where significant numbers of lead poisoning cases have recently been reported, and in which children under six years of age reside. Such program shall employ, to the extent possible, residents of the areas in which inspections are conducted, which residents shall not be subject to the provisions of chapter thirty-one, unless required as a condition for receipt of federal funds, or section nine A of chapter thirty.

Upon the request of any occupant, the director shall cause to have the occupant's premises inspected within a reasonable time, not to exceed ten days, unless systematic inspection of the area in which the person requesting the inspection resides is scheduled within thirty days, in which case said inspection may be deferred up to twenty additional days.

When the director is informed of a case of lead poisoning pursuant to sections one hundred and ninety-one or one hundred and ninety-three, or otherwise, he shall cause to have inspected the dwelling in which the victim resides, or has recently resided, if the occupants of said dwelling consent, after reasonable notice, to such inspection. If the occupant refuses admittance, an agent of the director or of any local board of health or code enforcement agency may apply for a search warrant to permit entry. A court may issue a warrant upon a showing that a victim of lead poisoning resides, or has recently resided in said dwelling. The findings of such inspection shall be reported to the director and to the appropriate enforcement authorities set out in section one hundred and ninety-eight.

A dangerous level of lead found in a dwelling inspected pursuant to this section, or otherwise, shall be reported immediately to the owner of the building, all affected tenants, all mortgagees and lienholders of record, the appropriate enforcement authorities set out in section one hundred and ninety-eight, and the director. The director shall inform such other persons or agencies as he deems advisable, and shall cause to have prominently posted on all entrances to said dwelling a notice that the dwelling contains dangerous amounts of lead paint or other materials which children should not be allowed to eat or chew. Such notice may not be removed until all premises have been found to comply with section one hundred and ninety-seven.

When a dangerous level of lead is found in a dwelling inspected pursuant to this section, or otherwise, the director shall cause to have examined all children under six years of age, and such other children as he may find advisable to examine, residing or who have recently resided in said dwelling. The results of such examinations shall be reported to the director, the affected individual and his parent or legal guardian. The director shall inform such other persons or agencies as he deems advisable, subject to the provision of section one hundred and ninety-one relating to the names of affected individuals.

The director shall provide by regulation for the implementation by local boards of health, code enforcement agencies and housing inspection agencies of the provisions of this section and the periodic reporting to him of the results of all inspections of dwelling units conducted hereunder by said boards and agencies.

The director shall maintain comprehensive records of all inspections conducted pursuant to this section. Such records shall be geographically indexed in order to determine the location of areas of relatively high incidence of dangerous lead levels. Such records shall be public records. A summary of the results of all inspections conducted pursuant to this section shall be released quarterly, or more frequently if the director so determines, to all interested parties.

Added by St.1971, c. 1081, § 1. Amended by St.1974, c. 449, § 1.

§ 195. State laboratory for lead and lead poisoning detection; specimen analysis; fee; report as prima facie evidence

The commissioner shall establish, within the Bureau of Institute of Laboratories, a state laboratory for lead and lead poisoning detection. Said laboratory shall analyze specimens received from children for the presence of lead poisoning, and samples of paint and other materials for dangerous levels of lead.

Said laboratory shall analyze tests and samples submitted by persons and agencies not within the department as its facilities permit, and may charge for such services a fee not greater than the cost to it of such services. A copy of the report of said laboratory or any division thereof, certified as a true copy by the custodian of the records of said laboratory, shall be admissible in any judicial proceeding without further authentication by either the laboratory or by the agency for which said report was made and shall be prima facie evidence of the facts stated therein.

Added by St.1971, c. 1081, § 1. Amended by St.1973, c. 149.

§ 196. Prohibited acts; punishment; embargo of personal property

(*a*) No person shall apply or cause to be applied any lead-based paint, glaze or other substance to any toy, furniture, cooking, drinking, or eating utensil, or interior or exterior surface or fixture of any dwelling; and no person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away any toy, furniture, cooking, drinking or eating utensil to which any lead-based paint, glaze or other substance has been applied.

Any paint, glaze or other substance shall be deemed to be lead-based when it contains more than one-half of one per centum lead by weight (calculated as lead metal) in the total non-volatile content of liquid paints or in the dried film of paint or glaze already applied, or when it contains a substantially equivalent amount of lead measured by such alternative reliable method of measurement as the director shall by regulation establish.

Any person who violates the provision of this subsection shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each violation. Each article, surface or fixture to which a lead-based substance is applied shall constitute a separate violation. Any person who willfully violates the provisions of this subsection shall be punished by imprisonment for not more than three months for each violation.

Any article of personal property in violation of this subsection may be embargoed by the director in the manner provided in section one hundred eighty-nine A of chapter ninety-four.

(*b*) No person shall sell, expose for sale, deliver, give away or possess with intent to sell, deliver or give away any lead-based paint, glaze or other surface covering including raw lead or the raw lead compounds utilized in the home manufacturing of glazes as defined in subsection (*a*); provided, however, that the director may by regulation with the concurrence of a majority of the advisory committee exempt from the provisions of this subsection certain lead-based paints that are not intended or suitable for use on or within residential premises, and are not advertised or labeled as intended or suitable for such uses, and are not sold to the general public on a retail basis, when he finds with substantial certainty that the sale or use of said paints will not result in the exposure of children younger than six years of age to said paints and will not result in an additional danger to life or health for such children or for the general public. The director may by regulation with the concurrence of a majority of the advisory committee exempt from the provisions of this subsection certain lead-based ceramic glazes or the raw lead and raw lead compounds utilized in the home manufacturing of glazes on such terms as he finds will not result in an additional danger to life or health.

Whoever violates the provisions of this subsection shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars for each violation. Each can, bottle or other container of any prohibited substance shall constitute a separate violation. Whoever willfully violates the provisions of this subsection shall be punished by imprisonment for not more than six months for each violation. Any article or substance in violation of this subsection may be embargoed by the director in the manner provided in section one hundred eighty-nine A of chapter ninety-four.

Added by St.1971, c. 1081, § 1. Amended by St.1971, c. 1081, § 2; St. 1975, c. 410.

§ 197. Duty of owner of residential premises; removal or cover of offending paint or material

Whenever a child or children under six years of age resides in any residential premises in which any paint, plaster or other accessible materials contain dangerous levels of lead as defined pursuant to section one hundred and ninety-four, the owner shall remove or cover said paint, plaster or other material so as to make it inaccessible to children under six years of age. Whenever any such residential premises containing said dangerous levels of lead undergoes a change of ownership and as a result thereof, a child or children under six years of age will become a resident therein, the new owner shall remove or cover said paint, plaster or other material so as to make it inaccessible to such children.

Repainting with non-lead-based paint, without removal of the offending paint, plaster or other material shall not constitute compliance with this section. Such removal or covering shall be performed as follows:—

(*a*) All peeling paint, plaster or other material, on both interior and exterior surfaces and fixtures, shall be removed or adequately covered.

(*b*) Paint, plaster or other material that is not peeling shall be removed or covered on window sills; door frames below the four-foot level; windows, including mullions, below the four-foot level; stair rail spindles; stair treads from the lip to the riser on bottom and four inches back from the lip on the top of the tread; doors below the four-foot level and four inches from all edges; stair rails; porch railings; and all other exterior and interior surfaces or fixtures that may be readily chewed by children.

This duty shall apply to every owner of residential premises whenever a child or children under six years of age reside therein or whenever such premises undergoes a change of ownership and as a result thereof a child or children under six years of age shall reside therein, whether or not his premises have been inspected pursuant to section one hundred and ninety-four or otherwise. This section shall be strictly construed and enforced so as to best protect the safety of residents of such dwellings.

Added by St.1971, c. 1081, § 1.

§ 198. Violations and enforcement of sections 196 and 197

Any violation of sections one hundred and ninety-six and one hundred and ninety-seven may be treated by any party as a violation of the state sanitary code and all procedures and remedies applicable to such violations of said sanitary code shall be available to correct, deter or punish violations of said sections. The district and superior courts shall have jurisdiction to enforce the provisions of said sections to the same extent that said courts have jurisdiction to enforce said sanitary code.

All local boards of health or other code enforcement agencies, including in the city of Boston the commissioner of housing inspection shall enforce sections one hundred and ninety-six and one hundred and ninety-seven in the same manner and with the same authority as they may enforce the sanitary code. The director shall provide by regulation for the implementation by local boards of health, code enforcement agencies and housing inspection agencies of the provisions of this section and the periodic reporting to him of the results of all actions undertaken hereunder by said boards and agencies.

The director shall have concurrent responsibility and authority to enforce sections one hundred and ninety-six and one hundred and ninety-seven and in so doing shall have available to him all powers and authority which shall be available to local boards of health pursuant to sections one hundred twenty-seven A through one hundred twenty-seven K inclusive.

Violations of sections one hundred and ninety-six and one hundred and ninety-seven shall be treated as emergency matters, and shall be given preference by enforcing agencies and speedy hearings by district and superior courts.

Added by St.1971, c. 1081, § 1. Amended by St.1974, c. 449, § 2.

§ 199. Liability of owner of residential property; damages

The owner of any residential property shall be liable for all damages caused by his failure to perform the duties required of him pursuant to subsection (*a*) of section one hundred and ninety-six or section one hundred and ninety-seven.

The owner of any residential property who is notified of a dangerous level of lead in paint, plaster or other material present upon his premises pursuant to section one hundred and ninety-four, and who does not satisfactorily correct or remove said dangerous conditions shall in addition to the provisions of the preceding paragraph be subject to punitive damages, which shall be treble the actual damages found.

Added by St.1971, c. 1081, § 1.

§ 200. Reporting of certain burn injuries by physicians, et al., required; records; public inspection

A physician, intern or medical assistant, registered as provided in section nine A of chapter 112, a public health nurse, or another person who professionally examines or treats a person with a burn injury affecting five per cent or more of the surface area of his body, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, shall report such injury to the department in accordance with the rules and regulations of the department. Such report shall describe as fully as possible the etiology of said injury, shall be made on forms prescribed by the commissioner, and shall be submitted not later than fourteen days, unless special circumstances justify a later reporting, after said physician, intern, medical assistant, nurse, or other person examines the injured person, or after said patient has been admitted to a hospital, sanatorium, or other institution.

The department shall maintain comprehensive records of all reports submitted pursuant to this section. Such reports and records shall be open to public inspection and constitute public records. The department shall annually compile such records and reports and publish a statistical abstract thereof which shall also be a public record and open to inspection by the public.

Added by St.1973, c. 650. Amended by St.1974, c. 122.

§ 201. First aid training of emergency personnel, including cardiopulmonary resuscitation; standards; refresher course; coordination by department; personnel excepted

Members of police and fire departments, members of the police force of the metropolitan district commission, the capitol police, members of the uniformed branch of the state police participating in highway patrol, persons appointed permanent or temporary lifeguards by the commonwealth or any of its political subdivisions, and members of emergency reserve units of a volunteer fire department or fire protection district shall be trained to administer first aid, including, but not limited to, cardiopulmonary resuscitation by July first, nineteen hundred and seventy-eight, including those appointed on or after January first, nineteen hundred and seventy-six. The training shall meet the standards for first aid training prescribed by the department and shall not be less than the standards established by the Committee on Cardiopulmonary Resuscitation and Emergency Cardiac Care of the American Heart Association, and shall be satisfactorily completed by them as soon as practical, but in no event more than one year after the date of their employment. Satisfactory completion of a refresher course approved by the department in cardiopulmonary resuscitation each year and in other first aid every three years shall also be required.

The department shall coordinate the provision, by county, of training required by this section. Such training shall be provided at no cost to the trainee.

This section shall not apply to police officers, fire fighters and persons engaged in police and fire work whose duties are primarily clerical or administrative.

Added by St.1974, c. 795, § 1. Amended by St.1977, c. 324.

FETAL DEATHS

§ 202. Fetal deaths; reports; confidentiality; disposition of remains; violations; forms

As used in this section, "fetal death" means death prior to the complete expulsion or extraction from its mother of a fetus, irrespective of the duration of pregnancy, as indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. "Fetal death" does not include an abortion as defined in section twelve K of chapter one hundred and twelve.

When a fetal death occurs in a hospital, if a fetus is of twenty weeks gestation or more, or a weight of three hundred and fifty grams or more, the physician in attendance shall prepare and transmit a report of such death to the person in charge of the hospital or his designated representative, who shall file such report with the commissioner within ten days after such death.

When a fetal death occurs outside a hospital, if a fetus is of twenty weeks gestation or more, or a weight of three hundred and fifty grams or more, the physician in attendance at or immediately after delivery shall prepare and file a report of such death with said commissioner within ten days after such death.

When a fetal death occurs without medical attendance at or immediately after delivery or when the fetal death may have occurred from violence or unnatural causes, if a fetus is of twenty weeks gestation or more, or a weight of three hundred and fifty grams or more, the medical examiner shall investigate the cause and shall prepare and file a report of such death with said commissioner within ten days after such death.

Said commissioner may compile an annual statistical report of fetal deaths, and may make such further use of such records as he deems useful for administrative and research purposes connected with health programs and population studies.

Fetal death reports shall be confidential and shall be released by the department only upon written request of the parent, his or her guardian, executor, attorney, or any other person designated by the parent in writing. Such reports may also be released to the National Center for Health Statistics in the Department of Health, Education and Welfare, and to persons authorized by said commissioner under section twenty-four A of this chapter to conduct research studies. The department may release copies of such reports, or information contained therein, to other persons only in a manner which does not allow identification of the parents.

Disposition of fetal remains shall be made at the direction of the parent in either manner as hereinafter provided: the remains may be buried, entombed or cremated in accordance with chapter one hundred and fourteen and a copy of a report required by this section shall constitute the certificate required by section forty-five of said chapter one hundred and fourteen. Said copy shall, within thirty days after the issuance of a burial permit, be destroyed by the local board of health; or in all other circumstances, the fetal remains shall be disposed of by the hospital or as directed by the attending physician or medical examiner in a manner which does not create a hazard to the public health. Such disposition shall not be subject to the provisions of said chapter one hundred and fourteen. Before disposition, the physician or person in charge of the hospital shall ensure that the parent is informed of his right to direct either burial, entombment or cremation of the fetal remains, or disposal of the remains by the hospital or physician. Before disposition, the parent shall be informed in writing of the hospital policy relating to disposal of fetal remains, and shall be informed of the availability of a chaplain if any for counsel.

The provisions of chapter forty-six regarding the reporting of death shall not apply to fetal deaths.

A physician or medical examiner neglecting or refusing to file a report required by this section, or who makes a false statement therein, shall be subject to a fine of not more than fifty dollars.

The commissioner shall prescribe the form for the making of reports under this section, which shall be consistent with the United States standard report of fetal death.

Added by St.1977, c. 598, § 5. Amended by St.1978, c. 342.

CHAPTER 111B

ALCOHOLISM

Sec.

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§ 1. Short title

This chapter shall be known and may be cited as the Alcoholism Treatment and Rehabilitation Law.

Added by St.1971, c. 1076, § 1.

§ 2. Application of chapter

The programs or activities of the organization known as Alcoholics Anonymous or any other private organization in the field of alcoholic rehabilitation shall not be restricted or regulated by the provisions of this chapter.

Nothing herein contained shall affect any laws, ordinances, by-laws, resolutions or regulations against driving after drinking alcohol, driving under the influence of alcohol, or other similar offenses that involve the operation of motor vehicles, machinery or other hazardous equipment.

Added by St.1971, c. 1076, § 1.

§ 3. Definitions

In this chapter the following words shall, unless the context requires otherwise, have the following meanings:—

"Administrator", the person in charge of the operation of a facility, or his designee.

"Alcoholic", a person suffering from alcoholism.

"Alcoholism", a medically diagnosable disease characterized by chronic, habitual or periodic consumption of alcoholic beverages resulting in the (1) substantial interference with an individual's social or economic functions in the community, or (2) the loss of powers of self-control with respect to the use of such beverages.

"Commissioner", the commissioner of public health.

"Department", the department of public health.

"Director", the director of the division of alcoholism.

"Division", the division of alcoholism.

"Facility", any public or private place, or portion thereof, providing services especially designed for the detoxification of intoxicated persons or alcoholics.

"Halfway house for alcoholics", an intermediate care center in a community which provides temporary residential accommodation, guidance, supervision, and personal adjustment services for a group of three or more sober alcoholics, provided it shall not be deemed a facility as defined in section three of chapter one hundred and eleven B or a permanent residence.

"Incapacitated", the condition of an intoxicated person who, by reason of the consumption of intoxicating liquor is (1) unconscious, (2) in need of medical attention, (3) likely to suffer or cause physical harm or damage property, or (4) disorderly.

"Independent physician", a physician registered in accordance with chapter one hundred and twelve, other than one holding an office or appointment in any department, board or agency of the commonwealth, or in any public facility.

"Juvenile", any person who is between seven and seventeen years of age.

"Patient", any person admitted to a facility.

"Treatment", services and programs for the care of intoxicated persons and alcoholics.

Added by St.1971, c. 1076, § 1. Amended by St.1973, c. 1040, § 1.

§ 4. Coordination of alcoholism programs; providing for facilities and services

The department shall coordinate matters affecting alcoholism in the commonwealth, shall establish and conduct a program for the treatment of intoxicated persons and alcoholics, including juveniles and young adults, their rehabilitation and the prevention of alcoholism in cooperation with public and private agencies, business and industry, and shall provide technical assistance and consultation services whenever required. The department may adopt rules and regulations to carry out its powers and duties under this chapter. The department shall be responsible for assuring that the following services are available and shall utilize community mental health centers and existing facilities and services available within the private sector whenever possible: (1) detoxification services on a twenty-four hour basis in or near population centers which meet the immediate medical and physical needs of intoxicated persons, including necessary diagnostic and referral services; (2) medical and hospital services which are available on a twenty-four hour basis and which, whenever possible, are provided in existing general hospital facilities; (3) rehabilitation services, including family care, residential aftercare and appropriate therapy which, whenever, possible, shall be coordinated with the Massachusetts rehabilitation commission; (4) inpatient psychiatric services for those alcoholics whose diagnosis reflects serious alcoholic related mental disturbances which, whenever possible, shall be conducted with services available in the department of mental health; and (5) training programs for professional and nonprofessional workers in the field of treatment and rehabilitation of alcoholics and intoxicated persons. The department shall not grant its approval for the establishment or maintenance of a facility, pursuant to section seven, in any jail, house of correction or institution operated by the department of correction; provided, however, the department shall grant its approval for the establishment and maintenance of a facility in the Massachusetts correctional institutions at Bridgewater and Framingham, if such facility meets the standards and procedures set forth in section seven.

Added by St.1971, c. 1076, § 1.

§ 5. Powers of department; list of facilities and services

The department may: (1) make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter including, but not limited to, contracts with government departments, public and private agencies and facilities, physicians and other persons rendering services to alcoholics; provided, however, that all rates are to be established in accordance with the provisions of chapter six A, inclusive of chapter seven wherever applicable; and provided further, that the income and resource standards under chapter one hundred eighteen E for determining the financial ability of alcoholics to pay for services shall be taken into consideration to the fullest extent possible and the department shall be subrogated to any public or private third party payments which may be due; (2) establish and operate facilities if adequate public and private resources are not available; and (3) solicit and accept for use in relation to the purposes of this chapter any gift or bequest of money or property and any grant or loans of money, services, or property from the federal government, the commonwealth or any political subdivision thereof. Any money received under clause (3) shall be deposited with the state treasurer to be kept in a separate fund in the treasury for expenditure by the department in accordance with the conditions of the gift bequest, loan or grant without specific appropriation.

The department shall prepare and publish annually a list of all of its facilities and services operated by the division, shall make this list available upon request to members of the public, and shall furnish each police department in the commonwealth with a copy of such list.

Added by St.1971, c. 1076, § 1. Amended by St.1973, c. 1229, § 4J.

§ 6. License to establish and maintain facility; requirements and standards; filing of data; injunction; inspection; admission and treatment of patients

The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any person, other than a licensed hospital, a department, agency, or institution of the federal government, the commonwealth or any political subdivision thereof, deemed by it to be responsible and suitable to establish and maintain a facility and to meet applicable licensure standards and requirements. In the case of a department, agency or institution of the commonwealth or any political subdivision thereof, the department shall grant approval to establish and maintain a facility for a term of two years, and may renew such approval for like terms, subject to revocation by it for cause.

The department shall promulgate rules and regulations establishing requirements and standards for licensing and approval of facilities. Such requirements and standards shall include, but shall not be limited to:—

(1) the need for the facility in the community;

(2) the health standards to be met by the facility;

(3) misrepresentation as to the treatment afforded patients at a facility;

(4) licensing fees, application and revocation procedures, and the procedures for evaluation of treatment programs.

The department may establish different requirements and standards for different kinds of facilities, and may impose stricter requirements and standards in contracts with facilities and services made pursuant to section five.

Each facility shall be individually licensed or approved.

Each facility shall file with the department from time to time, such data, statistics, schedules or information as the department may reasonably require for the purposes of this section, and any licensee or other person operating a private facility who fails to furnish any such data, statistics, schedules or information as required, or who files fraudulent returns thereof, shall be punished by a fine of not more than five hundred dollars.

The department, after holding a hearing in accordance with chapter thirty A, may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew any license or approval for any failure to meet the requirements of its rules and regulations or standards concerning such facilities.

No person, excepting a licensed hospital, a department, agency or institution of the federal government, the commonwealth or any political subdivision thereof, shall operate a facility without a license and no department, agency or institution of the commonwealth or any political subdivision thereof shall operate a facility without approval from the department pursuant to this section. The superior court shall have jurisdiction in equity to restrain any violation of the provisions of this section and to take such other action as equity and justice may require to enforce its provisions. Whoever knowingly establishes or maintains a private facility without a license granted pursuant to this section shall, for a first offense, be punished by a fine of not more than five hundred dollars and for each subsequent offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years, or both.

Each facility shall be subject to visitation and inspection by the department and the department shall inspect each facility prior to granting or renewing a license or approval. The department may examine the books and accounts of any facility if it deems such examination necessary for the purpose of the section. The department is hereby authorized to make a complaint to a district court, to a justice of any court of record or to a magistrate authorized to issue warrants, who may thereupon issue a warrant to any officers or employees or the department authorizing them to enter and inspect at reasonable times, and to examine the books and accounts of any private facility refusing to consent to such inspection or examination by the department which the department has reason to believe is operating in violation of the provisions of this chapter. Refusal by the operator or owner to allow such entry and inspection pursuant to such a warrant shall for a first offense by punishable by a fine of not more than one hundred dollars and for each subsequent offense by a fine of not more than one thousand dollars or by imprisonment for not more than two years, or both.

The director may require facilities or services which contract with the commonwealth, pursuant to clause (1) of section five, to admit as an inpatient or outpatient any person to be afforded treatment pursuant to this chapter.

The department shall promulgate rules and regulations governing the extent to which the circumstances in which facilities and services may be required to treat any person as an inpatient or outpatient pursuant to this chapter, except that no licensed hospital with an emergency service shall refuse any person treatment for intoxication or alcoholism unless the person's need for treatment is not immediate and the hospital has at the time exceeded its reasonable treatment capacity for intoxication and alcoholism.

Added by St.1971, c. 1076, § 1.

§ 6A. Halfway houses for alcoholics; licensing or approval; rules and regulations; filing of information; inspection; remedies; penalties

The department shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any person, other than a department, agency or institution of the federal government, the commonwealth or any political subdivision thereof, deemed by it to be responsible and suitable to establish and maintain a halfway house for alcoholics. In the case of a department, agency or institution of the commonwealth or any political subdivision thereof, the department shall grant approval to establish and maintain a halfway house for alcoholics for a term of two years, and may renew such approval for like terms, subject to revocation by it for cause.

The department shall promulgate rules and regulations establishing requirements and standards for licensing and approval of halfway houses for alcoholics. Such rules and regulations shall not, however, establish educational nor professional requirements for the staff of any halfway house for alcoholics. The requirements and standards established in the rules and regulations shall include, but shall not be limited to:

(1) The need for the halfway house;

(2) The range of therapeutic programs designed to meet the needs of the residents of the halfway house;

(3) Licensing fees, application and revocation procedures.

Each halfway house for alcoholics shall be individually licensed or approved.

Each halfway house for alcoholics shall file with the department from time to time, such data, statistics, schedules, or information as the department may reasonably require for the purposes of this section, and any licensee or other person operating a halfway house for alcoholics who fails to furnish such data, statistics, schedules or information as required, or who files fraudulent returns thereof, shall be punished by a fine of not more than one hundred dollars.

The department, after holding a hearing in accordance with chapter thirty A, may refuse to grant, suspend, revoke, limit or restrict the applicability of any license or approval or refuse to renew any license or approval for any failure to meet the requirements of its rules, regulations or standards concerning such halfway houses.

No person, excepting a department agency or institution of the federal government, the commonwealth or any political subdivision thereof, shall operate a halfway house without a license and no department, agency or institution of the commonwealth or any political subdivision thereof shall operate a halfway house for alcoholics without approval from the department pursuant to this section. The superior court shall have jurisdiction in equity to restrain any violation of the provisions of this section and to take such other action as equity and justice may require to enforce its provisions.

Whoever knowingly establishes or maintains a halfway house for alcoholics without a license granted pursuant to this section shall be punished by a fine of not more than five hundred dollars.

Each halfway house shall be subject to visitation and inspection by the department and the department shall inspect each facility prior to granting or renewing a license or approval. The department may examine the books and accounts of any facility if it deems such examination is necessary for the purpose of this section. The department is hereby authorized to make a complaint to a district court, to a justice of any court of record or to a magistrate authorized to issue warrants, who may thereupon issue a warrant to any officers or employees of the department authorizing them to enter and inspect at reasonable times, and to examine the books and accounts of any halfway house refusing to consent to such inspection or examination by the department which the department has reason to believe is operating in violation of the provisions of this section.

Added by St.1973, c. 1040, § 2.

§ 7. Detoxification facility; admission procedure; treatment; notification to family; transportation; aftercare treatment

Any person who is intoxicated and voluntarily applies for treatment at a detoxification facility or is brought to said facility in accordance with section eight shall be afforded treatment there or at another facility.

Prior to the admission of any person, the administrator of the facility shall cause him to be evaluated by physician-supervised personnel, experienced in alchoholism diagnosis. If there is any concern about the health or the immediate treatment needs of such person, he shall be examined by a physician. If upon said evaluation or examination, a determination is made that the person is intoxicated or is an alcoholic, and adequate and appropriate treatment is available, he shall be admitted. If any person is not admitted for the reason that adequate and appropriate treatment is not available at the facility, the administrator of the facility, acting whenever possible with the assistance of the director, or his designee, shall refer the person to a facility at which adequate and appropriate treatment is available. In the event that a person is not admitted to a facility, and has no funds, the administrator shall arrange for the person to be assisted to his residence, or if he has no residence to a place where shelter will be provided him.

Any person admitted to a facility shall receive treatment at the center or facility for as long as he wishes to remain or until the administrator determines that treatment will no longer benefit him; provided, however, that any person who at the time of admission is intoxicated and is incapacitated, shall remain at the facility until he is no longer incapacitated, but in no event shall he be required to remain for a period greater than forty-eight hours, or if any such person is committed for rehabilitative purposes to the Massachusetts correctional institution, Bridgewater or to the Massachusetts correctional institution, Framingham, he shall be required to remain for a period of not less than ten days.

When a person is admitted to a facility, his family shall be notified as soon thereafter as possible. If a patient who is not incapacitated requests that notification not be given, his request shall be respected. Any person, unless transported by the police, who is transported to a facility or from one facility to another or from a facility to his residence shall be transported by the department, or other persons authorized by the department. Said department shall promulgate rules and regulations regarding such transportation, and where necessary shall bear the expense thereof.

Upon discharge from or upon leaving a facility, the patient shall be encouraged to consent to appropriate outpatient or residential aftercare treatment.

Added by St.1971, c. 1076, § 1.

§ 8. Incapacitated persons; assistance to facility or protective custody

Any person who is incapacitated may be assisted by a police officer with or without his consent to his residence, to a facility or to a police station. To determine for purposes of this chapter only, whether or not such person is intoxicated, the police officer may request the person to submit to reasonable tests of coordination, coherency of speech, and breath.

Any person assisted by a police officer to a police station shall have the right, and be informed in writing of said right, to request and be administered a breathalyzer test. Any person who is administered a breathalyzer test shall be presumed intoxicated if evidence from said test indicates that the percentage of alcohol in his blood is ten one hundredths or more and shall be placed in protective custody at a police station or transferred to a facility. Any person who is administered a breathalyzer test, under this section, shall be presumed not to be intoxicated if evidence from said test indicates that the percentage of alcohol in his blood is five one hundredths or less and shall be released from custody forthwith. If any person who is administered a breathalyzer test, under this section, and evidence from said test indicates that the percentage of alcohol in his blood is more than five one hundredths and is less than ten one hundredths there shall be no presumption made based solely on the breathalyzer test. In such instance a reasonable test of coordination or speech coherency must be administered to determine if said person is intoxicated. Only when such test of coordination or speech coherency indicates said person is intoxicated shall he be placed in protective custody at a police station or transferred to a facility.

Any person presumed intoxicated and to be held in protective custody at a police station shall, immediately after such presumption, have the right and be informed of said right to make one phone call at his own expense and on his own behalf. Any person assisted by a police officer to a facility under this section shall have the right to make one phone call at his own expense on his own behalf and shall be informed forthwith upon arriving at the facility of said right. The parent or guardian of any person, under the age of eighteen, to be held in protective custody at a police station shall be notified forthwith upon his arrival at said station or as soon as possible thereafter.

If any incapacitated person is assisted to a police station, the officer in charge or his designee shall notify forthwith the nearest facility that the person is being held in protective custody. If suitable treatment services are available at a facility, the department shall thereupon arrange for the transportation of the person to the facility in accordance with the provisions of section seven.

No person assisted to a police station pursuant to this section shall be held in protective custody against his will; provided, however, that if suitable treatment at a facility is not available, an incapacitated person may be held in protective custody at a police station until he is no longer incapacitated or for a period of not longer than twelve hours, whichever is shorter.

A police officer acting in accordance with the provisions of this section may use such force as is reasonably necessary to carry out his authorized responsibilities. If the police officer reasonably believes that his safety or the safety of other persons present so requires, he may search such person and his immediate surroundings, but only to the extent necessary to discover and seize any dangerous weapons which may on that occasion be used against the officer or other person present; provided, however, that if such person is held in protective custody at a police station all valuables and all articles which may pose a danger to such person or to others may be taken from him for safekeeping and if so taken shall be inventoried.

A person assisted to a facility or held in protective custody by the police pursuant to the provisions of this section, shall not be considered to have been arrested or to have been charged with any crime. An entry of custody shall be made indicating the date, time, place of custody, the name of the assisting officer, the name of the officer in charge, whether the person held in custody exercised his right to make a phone call, whether the person held in custody exercised his right to take a breathalyzer test, and the results of the breathalyzer test if taken, which entry shall not be treated for any purposes, as an arrest or criminal record.

Added by St.1971, c. 1076, § 1. Amended by St.1973, c. 328, § 1; St.1973, c. 1143; St.1970, c. 597, § 1.

§ 9. Powers of administrator

Each person who receives treatment at a facility shall be subject to the supervisory powers of the administrator exercised in accordance with rules and regulations of the department; however, if the facility is operated by a department or agency of the commonwealth other than the department of public health, the administrator shall exercise his supervisory powers subject to the rules and regulations of the department which operates the facility.

Added by St.1971, c. 1076, § 1. Amended by St.1973, c. 328, § 1; St.1973, c. 1143.

§ 10. Juvenile patients

Any person under the age of eighteen who is a patient at a facility, pursuant to section seven, or held in protective custody at a police station pursuant to section eight shall, upon request of his parent or guardian, be released to the custody of said parent or guardian. All rights afforded any person under this chapter shall apply to juveniles. Any provisions of this chapter requiring the consent of a person shall, if the person is a juvenile, require the consent of both the juvenile and his parent or guardian.

Added by St.1971, c. 1076, § 1. Amended by St.1979, c. 597, § 2.

§ 11. Treatment record; patient's rights

The administrator of each facility shall keep a record of the treatment afforded each patient, which shall be confidential and shall be made available only upon proper judicial order, whether in connection with pending judicial proceedings or otherwise.

Any patient shall have the right to have a physician retained by him examine him, consult privately with his attorney, receive visitors, and send and receive communications by mail, telephone and telegraph. Such communications shall not be censored or read without consent of such patient. The foregoing shall not limit the right of the administrator, subject to reasonable rules and regulations of the department, to prescribe reasonable rules governing visiting hours and the use of telephone and telegraph facilities.

Added by St.1971, c. 1076, § 1.

§ 12. Service forces; establishment; nature; duties

The commonwealth, the several counties, cities and towns subject to appropriation, may establish service forces to perform the function of the police in accordance with the provisions of section eight. Such service forces may be a part of a police department, the department, or may be a separate unit. Members of the force shall be trained to carry out the responsibilities of police, and other individuals as these are set out in section eight, including the administration of first aid to intoxicated persons in need of medical assistance.

Added by St.1971, c. 1076, § 1.

§ 13. Civil and criminal liability of certain persons performing duties under this chapter

Police officers, facility administrators or other persons acting in a reasonable manner and pursuant to the provisions of this chapter shall not be held criminally or civilly liable for such acts.

Added by St.1973, c. 586, § 1.

CHAPTER 111C

EMERGENCY MEDICAL CARE

Sec.
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5. Ambulance license modification or transfer; application; denial; review.
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13. Liability of doctors, nurses, hospitals, ambulance operators and attendants.
14. Civil or criminal liability; immunity for certain persons aiding injured or incapacitated persons.

§ 1. Definitions

For the purpose of this chapter the following definitions shall apply unless the context or subject matter requires a different interpretation:—

"Ambulance", means any aircraft, boat, motor vehicle, or any other means of transportation, including a dual purpose vehicle, however named, whether privately or publicly owned, which is intended to be used for, and is maintained and operated for, the transportation of sick, injured or disabled individuals.

"Ambulance service", means the business or regular activity, whether for profit or not, of transporting sick, injured or disabled individuals by ambulance.

"Board", means the emergency medical care advisory board established under section seven.

"Commissioner", means the commissioner of public health.

"Company", means a corporation, a partnership, a business trust, an association, or an organized group of persons, whether incorporated or not; or any receiver, trustee, or other liquidating agent of any of the foregoing while acting in such capacity.

"Department", means the department of public health.

"Dual purpose vehicle", means a vehicle which is used for ambulance service even though it is also used for other purposes, including police and fire purposes.

"Person", means an individual, a company, or an agency or political subdivision of the commonwealth.

The department may define in regulations any term used in this chapter, provided that such definition is not contrary to a provision of the general laws.

Added by St.1973, c. 948, § 1.

§ 2. Powers and duties of department

For the administration and enforcement of this chapter, the department may:

(1) establish and enforce rules and regulations for the establishment and maintenance of ambulance services and for the maintenance and operation of ambulances, including but not limited to rules and regulations governing ambulance personnel, safety, sanitation, equipment, communications, medical supplies and records;

(2) establish fees for the issuance and renewal of licenses and certificates of inspection;

(3) make such reasonable classifications of ambulances, by type of vehicle and purpose, and ambulance services, by nature and scope of service, as it finds necessary or appropriate in the public interest;

(4) determine the need for and to plan for the distribution of ambulances and ambulance services in the commonwealth;

(5) inspect at any time any ambulance and any facilities and records maintained in connection with any ambulance service, provided that a license has been issued, or an application for a license has been filed, for such ambulance service;

(6) approve courses in emergency medical care for ambulance operators and attendants under such conditions as it may establish with the advice of the board;

(7) develop a cost-sharing program between local, state and federal governments and voluntary private funding for training of ambulance operators and attendants and purchase of ambulances;

(8) coordinate on a regional basis communications centers, ambulance services, hospital emergency services, law enforcement and fire units and emergency operations centers and facilitate hospital transfers of patients;

(9) subject to the provisions of section three, make rules and regulations regarding adequate insurance coverage for licensed ambulance services and for operators and attendants of certified ambulances;

(10) make rules, regulations, and orders, and delegate authority to its divisions, employees and agents, as may be necessary or appropriate to carry out the provisions of this chapter.

The department shall not establish the requirements as specified in clause (1) and shall not establish conditions for approval of courses as specified in clause (6) until the board has been provided a reasonable opportunity to review and make recommendations on such requirements and conditions.

Added by St.1973, c. 948, § 1.

§ 3. Ambulance service; license; application; issuance; renewal; provisional license

Any person who proposes to establish or maintain an ambulance service shall file an application with the department, containing such information as the department may require, including but not limited to the identity of the applicant, and any parent or associated company, and the number of ambulances for which application is made.

Upon receipt and review of an application for a license, the department shall issue a license if it finds that the applicant is responsible and suitable to establish or maintain the proposed service and meets such requirements as the department may establish by regulation for an ambulance service license. On or after July first, nineteen hundred and seventy-seven no original or renewal license shall be issued hereunder except in the case of ambulance services owned or operated by an agency or political subdivision of the commonwealth unless the applicant has received and there is in effect a contract of insurance conforming to the rules and regulations established by the department, subject to the provisions of chapter one hundred and seventy-five.

In the case of a renewal application, the department may, subject to such regulations as it may make, issue a provisional license to an applicant who does not meet the requirements under this section, provided that the applicant has demonstrated to the department's satisfaction a good faith intention to meet such requirements, and, provided further, that the department finds that the licensee provides adequate emergency medical care and evidences a potential for full licensure within a reasonable period, not to exceed six months. The department, however, shall in no case issue a person more than two consecutive provisional licenses for the same ambulance service.

The department shall set forth in every license which it issues under this section the name and address of the person to whom such license is issued, the period for which such license is issued, the classification, if any, for which such license is issued, the number and classification of ambulances to be operated under the license, the conditions as to transfer and assignment prescribed by law, and such other terms of issuance as the department may, in the public interest, prescribe as necessary or appropriate. The department shall fix the period of a provisional license for no more than six months, and it shall fix the period of a full license for not less than twelve months nor more than fifteen months.

Added by St.1973, c. 948, § 1.

§ 4. Inspection of ambulances; certificate, display

Prior to issuing a license under section three, the department shall inspect each ambulance for which application is made. Each person to whom a license is issued shall be entitled to a certificate of inspection for each ambulance listed in his license upon proof that the ambulance is in compliance with such requirements as the department may establish by regulation for a certificate of inspection. Each certificate shall be valid only for the vehicle for which it is issued and to the licensee to whom it is issued, and no certificate shall continue in force after the expiration of the license under which it is issued. Each licensee issued a certificate of inspection shall cause such certificate to be displayed in such ambulance in such manner as the department may prescribe by regulation.

Added by St.1973, c. 948, § 1.

§ 5. Ambulance license modification or transfer; application; denial; review

Any licensee who desires a change in his allotted number of ambulances or other license modification shall file a request in writing therefor with the department. The department shall not grant such request unless it finds that the modification requested is in the public interest, and in the case of modification involving a substantial change in the nature and scope of the ambulance service, that such change serves a need for emergency medical care. If a licensee so desires, he may file a request for license modification as part of a renewal application under section three, and the department shall consider, and act upon, such request and the application at the same time.

No licensee shall transfer or assign in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any company, the license issued him, or any rights thereunder, without first obtaining the department's written permission upon application to the department. Every application therefor shall contain such information as the department may require, and shall be disposed of within sixty days of filing with the department. The department shall grant written permission only if the department finds that the transferee or assignee is responsible and suitable to maintain an ambulance service and meets such requirements as the department has established by regulation for a license. Every denial order shall include a statement of the reasons for denial and the provisions of law relied upon, and shall be subject to judicial review through a petition for a writ of certiorari brought within thirty days thereof under the provisions of section four of chapter two hundred and forty-nine. Any transfer or assignment in violation of this section shall be void.

Added by St.1973, c. 948, § 1.

§ 6. Ambulance operators and attendants; training requirements, temporary waiver

No person shall operate an ambulance or be an attendant thereon unless he has successfully completed a full course in emergency medical care approved by the department pursuant to this chapter, or has received training in the provision of emergency medical care which, subject to such regulations as the department may establish with the advice of the board, the department finds to be substantially equivalent to that provided by full courses in emergency medical care approved by the department pursuant to this chapter, and unless in each year following completion of such course he participates satisfactorily in a supplemental course in emergency medical care approved by the department pursuant to this chapter; provided, however, that the department may, under such regulations as it may establish, grant a temporary waiver of such requirements, but only in the case of an operator and for no more than three months, upon application and upon a finding that the public convenience and necessity require such a waiver.

For the purpose of establishing training requirements under this section, the department shall classify ambulance services by such categories as dual purpose vehicles, municipally-operated services, volunteer services, or such others as the department may from time to time determine, and shall, with the board, establish training requirements for operators and attendants by class of service. In establishing the level of such requirements for each service, the department shall consider such factors as geographic location of the service, availability of approved training courses, source and compensation for personnel serving as ambulance operators and attendants, and financial impact on the licensee.

The training approved by the department shall not be less than the Standards established by the Committee on Cardiopulmonary Resuscitation and Emergency Cardiac Care of the American Heart Association.

Added by St.1973, c. 948, § 1. Amended by St.1974, c. 795, § 2.

§ 7. Advisory board

There shall be within the department an emergency medical care advisory board, consisting of the commissioner or his designee, as chairman, the registrar of motor vehicles, or his designee, the commissioner of public safety, or his designee, the commissioner of the metropolitan district commission, or his designee, the chief executive officer, or his designee, of each regional comprehensive health planning agency designated pursuant to the federal Public Health Service Act (P.L. 89–749) [1], and twenty-one members appointed by the commissioner as follows:— three from the Massachusetts Medical Society; one each from the Massachusetts Nurses Association, the Massachusetts Hospital Association, the Massachusetts Ambulance Association, the Massachusetts Heart Association, the American Red Cross, the Massachusetts League of Cities and Towns, the Massachusetts Chiefs of Police Association, and the Massachusetts Fire Chiefs Association; one from the volunteer ambulance associations; three at large from organizations involved in the planning for, provision of or training for emergency medical care, including any of the organizations listed above; a representative of the Governor's Highway Safety Bureau; one person who shall be an expert in communications; one person who shall be an attorney; and three who shall be consumers. Additional members may be appointed to the board by the commissioner upon recommendation of a majority of the board.

Each appointed member of the board shall serve for a term of three years, or until his successor is appointed and qualified, whichever is longer; provided, however, that no appointee shall serve more than two consecutive terms. Appointees shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred in the discharge of their duties.

The board shall, in addition to other powers conferred in this chapter and in addition to functioning in a general advisory capacity shall assist in coordinating the efforts of all persons and agencies in the commonwealth concerned with emergency medical care; and render advice on the development of emergency medical care services where needed. The board shall make an annual report to the commissioner on or before the thirtieth day of June each year.

Added by St.1973, c. 948, § 1.

[1] 42 U.S.C.A. § 246.

§ 8. Ambulance service; complaint procedures; investigation; notification of complainant

The department shall establish and implement procedures for the making, transmission, and investigation of complaints concerning the maintenance of any ambulance service. The department shall prepare, and make available upon request, a description of such procedures, and it shall, as the public interest may require, investigate every complaint received, except to the extent that the act or practice complained of does not constitute a violation of this chapter or any regulation under this chapter. Upon investigation the department shall notify the complainant, if known, of its action in the matter. If it finds that an investigation is not required, it shall notify the complainant, if known, of its finding and the reasons therefor.

Added by St.1973, c. 948, § 1.

§ 9. Ambulance deficiencies; correction orders; requests for reconsideration; assessments, hearing, collection, judicial review

(*a*) Whenever the department finds upon inspection, or through information in its possession, that an ambulance is not in compliance with a requirement established under this chapter, the department may order the licensee to correct such deficiency. Every such correction order shall include a statement of the deficiencies found, the period prescribed within which the deficiency must be corrected, and the provisions of law relied upon. The period prescribed shall be reasonable and, except in an emergency declared by the commissioner, not less than thirty days from receipt of such order. Within seven days of receipt, the affected licensee may file a written request with the department for administrative reconsideration of the order or any portion thereof. Failure of the department to grant, deny, or otherwise act upon a written request within seven days of filing shall be deemed a denial of such request.

(*b*) The department may assess a licensee ordered to correct deficiencies fifty dollars per deficiency for each day the deficiency continues to exist beyond the date prescribed for correction. Before making an assessment, the department shall give the affected licensee notice of the matters alleged and the provisions of law relied upon and shall accord such licensee an opportunity for a hearing upon timely written request. If after hearing, or waiver thereof, the department determines that cause exists, it shall make an appropriate assessment. The affected licensee shall pay such assessment except to the extent that, upon judicial review, the reviewing court may reverse the final decision of the department.

(*c*) An assessment made under this section shall be due and payable to the commonwealth on the thirtieth day after notification to the affected licensee. The attorney general shall recover any assessment due and payable in an action of contract, or any other appropriate action, suit or proceeding, brought in the name of the commonwealth in the superior court. Upon the motion of the attorney general, such court may consolidate for hearing and decision a judicial review proceeding and an assessment collection proceeding if the proceedings result from the same administrative action.

Added by St.1973, c. 948, § 1.

§ 10. Revocation, refusal to renew or suspension of certificate of inspection or license for violations; hearing; modification of license

The department may, after hearing or waiver thereof, revoke or refuse to renew a certificate of inspection or license for failure to perform such requirements as set forth in such certificate or license, for violation of any applicable requirement prescribed under this chapter, for violation of a correction order, or for engaging in, or for aiding, abetting, causing, or permitting, any act prohibited under this chapter. The commissioner may, without hearing, suspend a certificate of inspection or license if he finds that the licensee concerned is operating or maintaining the ambulance subject to such certificate, or is maintaining the ambulance service subject to such license, in a manner which endangers the public health or safety; provided, however, that in every case of suspension the licensee shall be promptly afforded an opportunity for a hearing under this section. If after any hearing hereunder concerning a license, the department determines that cause exists, instead of revoking or refusing to renew such license, the department may issue an order modifying the license if it finds that the public interest would be better served by such action. No certificate of inspection under a licensee shall continue in force after the department has revoked or refused to renew such license.

Added by St.1973, c. 948, § 1.

§ 11. Enforcement proceedings; jurisdiction; injunctive relief

The attorney general, at the request of the department, shall, or any ten taxpayers of the commonwealth, may bring a bill in equity [1] in the superior or supreme judicial court to enforce compliance with this chapter or any rule, regulation, or order made under this chapter, whenever it shall appear that any person has engaged in, or is about to engage in an act or practice in violation of this chapter or any rule, regulation, or order made under this chapter, or whenever it shall appear that any person has aided, abetted, caused, or permitted, is aiding, abetting, causing, or permitting, or is about to aid, abet, cause, or permit any such act or practice. Upon a bill brought hereunder, the superior court or supreme judicial court, as the case may be, shall have jurisdiction to grant temporary relief and, upon hearing, a permanent injunction, which shall be mandatory in form, if appropriate; provided, however, that, where a bill is brought by ten taxpayers of the commonwealth, no permanent injunction shall be issued until the department has been permitted to intervene as a party, if it so desires, or to submit an amicus brief to the court. Any ten taxpayers filing a bill in equity hereunder shall serve a copy thereof upon the department on the same day as such filing.

Added by St.1973, c. 948, § 1.

[1] St.1973, c. 1114, an act conforming the General Laws to the Massachusetts Rules of Civil and Appellate Procedure, effective July 1, 1974, did not so conform this section. See c. 214, § 1 et seq., as enacted by section 62 of this act.

§ 12. Prohibited acts; penalty; investigation and prosecution of offenses; by attorney general

No person shall:

(1) establish or maintain an ambulance service without a valid license or in violation of the terms of a valid license;

(2) operate, maintain, or otherwise use any aircraft, boat, motor vehicle, or other means of transportation as an ambulance without a valid certificate of inspection;

(3) operate an ambulance or to serve as an attendant thereon in violation of section six;

(4) obstruct, bar, or otherwise interfere with an inspection undertaken under authority of this chapter;

(5) knowingly to make an omission of a material fact or a false statement in any application or other document filed with the department; or

(6) violate or fail to observe any requirement of this chapter, or of any rule, regulation, or order under this chapter, which requirement the department has made subject to this section by regulation.

Whoever engages in, aids, abets, causes, or permits any act prohibited under this section shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars for each offense. A separate and distinct offense shall be deemed to have been committed on each day during which any prohibited act continues after written notice by the department to the offender. The commissioner shall report each suspected offense to the attorney general for investigation and, if appropriate, prosecution in the courts of the commonwealth.

Added by St.1973, c. 948, § 1.

§ 13. Liability of doctors, nurses, hospitals, ambulance operators and attendants

No physician duly registered under the provisions of sections two, two A, or nine of chapter one hundred and twelve, and no nurse duly registered under the provisions of section seventy-four or section seventy-six of said chapter, and no hospital shall be liable in a suit for damages as a result of acts or omissions related to advice, consultation or orders given in good faith to ambulance operators and attendants who are qualified under section six, and are acting on behalf of an ambulance service duly licensed under section three, by radio, telephone or other remote means of communication under emergency conditions and prior to arrival of the patient at the hospital, clinic, office or other health facility from which the emergency communication to the ambulance operator or attendant is made; nor shall any said ambulance operator or attendant be liable in a suit for damages as a result of his said acts or omissions based upon said advice, consultation or orders by remote communication, if the said acts or omissions were made in good faith.

Added by St.1973, c. 948, § 1.

§ 14. Civil or criminal liability; immunity for certain persons aiding injured or incapacitated persons

No emergency medical technician certified under the provisions of this chapter and no police officer or firefighter, who in the performance of his duties and in good faith renders emergency first aid or transportation to an injured person or to a person incapacitated by illness shall be personally in any way liable as a result of rendering such aid or as a result of transporting such person to a hospital or other safe place, nor shall he be liable to a hospital for its expenses if, under emergency conditions, he causes the admission of such person to said hospital.

Added by St.1977, c. 649.

CHAPTER 111D [1]

CLINICAL LABORATORIES

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3. Advisory committee; membership.
4. Licensing requirements; exemptions.
5. License; application; filing; issuance; renewal; form.
6. Infectious disease reports; confidential information.
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8. Prohibited activities.
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11. Revocation of license; administrative sanctions; grounds; hearing.
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13. Violations; penalties.

[1] Added as Chapter 111E by St.1975, c. 881, § 1.

§ 1. Definitions

In this chapter the following words shall, unless the context requires otherwise, have the following meaning:

(1) "Clinical Laboratory" means a facility or place, however named, the purpose of which is to make biological, serological, chemical, immunohematological, cytological, pathological, or other examinations of materials derived from a human body.

(2) "Commissioner" means the commissioner of public health.

(3) "Company" means a corporation, a partnership, an association, or an organized group of persons, whether incorporated or not.

(4) "Department" means the department of public health in the executive office of human services.

(5) "Person" and "whoever" shall include corporations, societies, associations, partnership, an individual or his estate upon his death, and a political subdivision of the commonwealth; but not an agency of the commonwealth.

Added by St.1975, c. 881, § 1.

§ 2. Regulatory authority of public health department

The department shall have authority:

(1) to establish, with the advice of the advisory committee on clinical laboratories, and to enforce, requirements in addition to any prescribed in this chapter for the construction, maintenance, and utilization of clinical laboratories, including standards of performance in the examination of specimens;

(2) to require evidence of successful participation by clinical laboratories licensed under section five in proficiency testing programs, and by laboratory personnel in training programs, covering all or specific laboratory specialties and approved by the department after consultation with the advisory committee on clinical laboratories;

(3) to establish appropriate fees for the issuance and renewal of licenses;

(4) to make such reasonable classification of clinical laboratories, by category of laboratory procedures performed or nature and

scope of services provided, as the department may find necessary or appropriate in the public interest;

(5) to inspect at any time any clinical laboratory and any records maintained in connection with such laboratory; provided, that a license has been issued or an application for a license has been filed under section five;

(6) to conduct investigations and adjudicatory proceedings;

(7) to conduct research and studies, to sponsor or hold educational programs, to make informational materials available to the public, and to engage in such other activities as may be necessary or appropriate for the administration or enforcement of this chapter; and

(8) to make such rules, regulations, as may be necessary or appropriate for the administration or enforcement of this chapter.

Added by St.1975, c. 881, § 1.

§ 3. Advisory committee; membership

There shall be within the department an advisory committee on clinical laboratories, to advise the department, as provided in section two, on the administration of this chapter. Such committee shall consist of twelve members, to be appointed by the commissioner, as follows: four persons, two physicians and two not physicians, who meet the requirements for confirmation as a clinical laboratory director; one other physician; one medical laboratory technologist; one chief executive officer of a hospital licensed by the department; and five non-providers of health services, one of whom shall be a member of the Massachusetts bar. Each member of the committee shall serve without compensation for a term of three years, or until his successor is appointed, whichever is longer; provided, that no member shall serve more than two consecutive terms. A chairman of the committee shall be elected annually from the membership.

Added by St.1975, c. 881, § 1.

§ 4. Licensing requirements; exemptions

No person shall maintain a clinical laboratory in the commonwealth apart from a hospital or clinic licensed under section fifty-one of chapter one hundred and eleven, unless he holds, and there is in effect, a license issued under section five except that the licensing requirement of this section shall not apply to: (*a*) a clinical laboratory maintained by not more than two licensed physicians exclusively in connection with the diagnosis and treatment of his own patients; or (*b*) in the case of a clinical laboratory maintained exclusively for research and teaching purposes and not providing reports for diagnosis and treatment of patients or for a public health purpose; or (*c*) any laboratory with respect to tests or other procedures made by it for any person engaged in the business of insurance if made for purposes of determining whether to write an insurance contract or determining eligibility or continued eligibility thereunder, or for the examination of its employees or officers. No provision of this chapter other than section six shall apply to any agency of the commonwealth; nor shall any provision of this chapter relative to licensing apply to any hospital or clinic licensed under section fifty-one of chapter one hundred and eleven.

Added by St.1975, c. 881, § 1.

§ 5. License; application; filing; issuance; renewal; form

Any person seeking a license to maintain a clinical laboratory apart from a hospital or clinic licensed under section fifty-one of chapter one hundred and eleven shall file with the department a license application containing such information as the department may reasonably require, including but not limited to the identity of the applicant and any parent or associated company, the identity and qualifications of the proposed laboratory director, and the procedures or categories of procedures for which the license is sought.

Upon receipt and review of an application for license and upon payment of the appropriate fee, the department shall issue a license if it finds that the applicant is responsible and suitable to maintain a clinical laboratory and meets such requirements as the department has established by regulation for a license. In the case of renewal application, the department may, subject to such regulations as it shall make, issue a provisional license to an applicant who does not meet every requirement for a license; provided, that the applicant has demonstrated to the department's satisfaction a good faith intention to correct deficiencies, and provided further, that the department finds that the licensee provides reliable reports of examinations of specimens and presents satisfactory evidence that the requirements for full licensure can and will be met within a period of time not to exceed six months. The department shall in no case issue a person more than two consecutive provisional licenses for the same clinical laboratory.

The department shall set forth in every license issued under this section the name and address of the licensee; the name by which the clinical laboratory shall be known; the address of the licensed premises; the period which such license is issued; the classification, if any, for which such license is issued; the conditions as to transfer and assignment prescribed by law; and such other terms of issuance as the department may reasonably prescribe. The period of a full license shall be not more than two years and the period of a provisional license shall be for not more than six months.

No licensee shall transfer the license issued him, or assign any authority granted thereunder, in any manner voluntarily or involuntarily, directly or indirectly, or by transfer or control of any person, without first obtaining the department's written permission, upon application to the department. Every application therefor shall contain such information as the department may require, and shall be approved or denied within sixty days of filing with the department. The department shall grant written permission if the department finds that the transferee or assignee is responsible and suitable to maintain a clinical laboratory and meets such requirements as the department has established by regulation for a license. Every denial order shall include a statement of the reasons for denial and the provisions of law relied upon, and shall be subject to judicial review.

Added by St.1975, c. 881, § 1.

§ 6. Infectious disease reports; confidential information

The department may require the reporting of any infectious disease found in the examination of specimens at clinical laboratories if, in its opinion, reporting of such disease is necessary to protect or promote the public health. Every person who and every agency which maintains a clinical laboratory shall report evidence of any infectious disease found in the course of the examination of specimens, if so required by the department, in such form, manner, and detail and within such time as the department shall prescribe. Reports made under this section shall not be considered as constituting a diagnosis nor shall any person making a report pursuant to this section be held liable in a civil proceeding for having violated a trust or confidential relationship. Notwithstanding section ten of chapter sixty-six, every such report shall be kept confidential by the department and its employees and agents and shall not be subject to the inspection, examination, or copying by any other agency of government or by any other person.

Added by St.1975, c. 881, § 1.

§ 7. Clinical laboratory director; appointment; qualifications

Every person licensed to maintain a clinical laboratory under this chapter shall appoint an individual, who shall bear the title "clinical laboratory director", with responsibility for the direction of the technical and scientific operation of such laboratory, including the examination of specimens and the making of reports thereon; provided, that no individual so appointed shall serve as clinical laboratory director for more than three months unless the department within such period shall certify that such person (1) is a physician who is certified in anatomical or clinical pathology by the American Board of Pathology or in at least one laboratory speciality by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, or other national accrediting board acceptable to the department, or who possesses qualifications which the department considers equivalent to any such certification; or (2) holds an earned doctoral degree, with a chemical, physical, or biological science as his major subject, from an accredited educational institution, and he is certified in at least one laboratory speciality by the American Board of Medical Microbiology, the American Board of Clinical Chemistry, or other national accrediting board acceptable to the department, or he possesses qualifications which the department considers equivalent to any such certification; or (3) has been responsible for direction of the technical and scientific operation of a clinical laboratory for at least twelve consecutive months at any time during the calendar years of nineteen hundred and seventy-one through nineteen hundred and seventy-five, and he meets one of the following requirements: (*i*) he holds an earned master's degree, with a chemical, physical, or biological science as his major subject, from an accredited educational institution and has had at least four years experience since graduation in a clinical laboratory, or (*ii*) he holds an earned bachelor's degree, with a chemical, physical, or biological science as his major subject, from an accredited educational institution and has had at least six years experience since graduation in a clinical laboratory, or (*iii*) he has passed an examination conducted by or under the sponsorship of the United States Public Health Service, and approved by the department as evidence of competence to direct the technical and scientific operation of a clinical laboratory.

The department may, in regulations, set conditions as to the employment of individuals as clinical laboratory directors, including a minimum number of hours per week required in such position; provided, that in no event shall any individual accept employment as a clinical laboratory director at more than three clinical laboratories during the same period. The department may revoke its confirmation of an appointment for cause shown but not otherwise.

Added by St.1975, c. 881, § 1.

§ 8. Prohibited activities

A clinical laboratory shall not:

(1) misrepresent, by false statement, by omission of a material fact, or by scheme, trick, or device, the category or categories of procedures performed at, or the service or services available at, a clinical laboratory;

(2) obstruct, bar, or otherwise interfere with an inspection undertaken under the authority of section two;

(3) make any false statement in or to omit a material fact from an application or other paper filed with the department;

(4) offer or give a commission, rebate, or other fee, directly or indirectly to any person as consideration for the referral of a specimen derived from a human body to a clinical laboratory for examination by such laboratory;

(5) solicit or accept a commission, rebate, or other fee, directly or indirectly, from any person as consideration for the referral of a specimen derived from a human body to a clinical laboratory for examination by such laboratory;

(6) lend the use of the name of a licensed clinical laboratory or of a licensed hospital or clinic, or of any employee of any such laboratory or institution, to an unlicensed clinical laboratory;

(7) to examine any specimen derived from a human body except upon the written request of a licensed physician, licensed dentist, licensed chiropractor, licensed surgeon, licensed podiatrist, licensed osteopath, or other person authorized to use the report of such examination by provision of chapter one hundred twelve, unless such examination is for the sole purpose of testing the accuracy or sufficiency of the procedures or equipment of a clinical laboratory and is by instruction of the director of such laboratory;

(8) report an examination of any specimen derived from a human body except to or as directed by the licensed physician, licensed chiropractor, licensed surgeon, licensed podiatrist, licensed osteopath, or other authorized person who requested such examination in writing, unless such examination was made for the sole purpose of testing the accuracy or sufficiency of the procedures or equipment of a clinical laboratory and by instruction of the director of such laboratory;

(9) make a report of an examination of any specimen derived from the human body without designating the name and address, and the name of the director, of the clinical laboratory in which such examination was actually performed;

(10) represent, or to maintain a specimen collection station on behalf of, any clinical laboratory, unless such laboratory, if in the commonwealth, is licensed under section five, or unless such laboratory, if not in the commonwealth, has been accredited or is licensed in accordance with federal law;

(11) employ a person as a director of a clinical laboratory, or to serve as a director of a clinical laboratory, except as provided in section seven;

(12) fail to report evidence of infectious disease in violation of section six or of any rule, regulation, or order made to implement section six; or

(13) violate or to fail to observe any requirement of this chapter or of a rule, regulation, or order made pursuant to this chapter, which the department has made subject to this section by regulation.

Added by St.1975, c. 881, § 1.

§ 9. Correction of deficiencies; orders

Whenever the department finds upon inspection, or through information in its possession, that a clinical laboratory licensed under this chapter is not in compliance with a requirement prescribed in or established under this chapter, it may by order require the licensee to correct such deficiency. Every correction order shall include a statement of the deficiencies found, the provisions of law relied upon, and the period prescribed for correction, which shall be reasonable and, except in an emergency declared by the commissioner, not less than thirty days after receipt of such order. Within ten days of receipt, the affected licensee may file a written request with the department for administrative reconsideration of the order or any portion thereof. Failure by the department to grant, deny, or otherwise act upon a written request within ten days after filing shall be deemed a denial.

Added by St.1975, c. 881, § 1.

§ 10. Unreliable reports of examinations; license modification

Whenever the department finds upon inspection, or through information in its possession, that a clinical laboratory, licensed under this chapter is not able to provide or is not providing reliable reports of examinations pursuant to the terms of such license, it may by order modify any term of such license as it deems necessary to enable the laboratory to provide reliable reports of examinations. Every license modification order shall include a statement of the reasons for modification, the provisions of law relied upon, and the date fixed for compliance, which date shall be reasonable and, except in an emergency declared by the commissioner, not less than thirty days after receipt of such order.

Except in the case of a license modification imposed as a sanction after hearing under section eleven, a licensee in receipt of an order shall have the opportunity for a hearing under the provisions of chapter thirty A. If after hearing the licensee establishes that the order, or any portion thereof, is not warranted, the department shall rescind or qualify such order, as appropriate. The filing of a request for a hearing shall not operate as a stay of the compliance date of a license modification order, but the department shall stay the compliance date upon written request, except to the extent that a stay would jeopardize the public health or public safety.

Added by St.1975, c. 881, § 1.

§ 11. Revocation of license; administrative sanctions; grounds; hearing

The department may revoke the license issued under section five or impose other appropriate administrative sanction upon a license, or both, for conduct by or chargeable to him as follows:

(1) failure to observe any term of such license;

(2) failure to meet any requirement for such license established under section five;

(3) failure to observe any order made under authority of this chapter or under other statutory authority vested in the department;

(4) engaging in, or aiding, abetting, causing, or permitting, any action prohibited under section eight; or

(5) other proper cause set forth in regulations made under this chapter.

Before sanctioning a licensee, the department shall give such licensee notice of the charges against him, the provisions of law relied upon, and the proposed sanction, and shall afford him the opportunity for a hearing under the provisions of chapter thirty A. Where, after hearing, the department finds that cause exists for imposition of a sanction, it need not impose the sanction proposed but may instead impose a lesser sanction if, in its judgment, a lesser sanction is appropriate in the circumstances. In the event revocation is imposed, the licensee shall be permitted a reasonable period in which to cease operation, but in no case less than thirty days after notice of the decision of the department.

Notwithstanding any other provision of this section, the commissioner may, at any time upon notice to the licensee, whether a hearing has been first commenced or not, suspend his license or issue such other preliminary order as the commissioner considers appropriate for the protection of the health or safety of the public if he should find that either is in jeopardy; provided, that a hearing shall be commenced within five days after such notice in any case of suspension without a prior hearing unless the licensee shall request a postponement. The finding of the commissioner shall be included in such notice.

Added by St.1975, c. 881, § 1.

§ 12. Complaints by department; jurisdiction

The department, in its own name, may bring a complaint in the superior court or supreme judicial court to enforce compliance with this chapter or any rule, regulation, or order made under this chapter, whenever it shall appear that any person has engaged in, is engaging in, or is about to engage in an act or practice in violation of this chapter or of any rule, regulation, or order made under this chapter, or whenever it shall appear that any person has aided, abetted, caused or permitted, is aiding, abetting, causing or permitting, or is about to aid, abet, cause or permit such an act or practice.

Added by St.1975, c. 881, § 1.

§ 13. Violations; penalties

Whoever maintains a clinical laboratory in the commonwealth without a license in violation of section four, or whoever, being licensed under section five, maintains a clinical laboratory in violation of the terms of such license, or whoever engages in, aids, abets, causes or permits any act prohibited under section eight, shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars. The commissioner shall transmit to the attorney general such evidence of an offense as the department may have in its possession.

Added by St.1975, c. 881, § 1.

PROFESSIONS AND OCCUPATIONS

CHAPTER 112

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SUPERVISION OF BOARDS BY DIRECTOR

§ 1. Duties of director of registration

The director of registration shall supervise the work of the several boards of registration and examination included in the division of registration. He shall recommend changes in the methods of conducting examinations and transacting business, and shall make such reports to the governor and council as they may require or he may deem expedient.

Amended by St.1969, c. 704, § 48.

REGISTRATION OF PHYSICIANS AND SURGEONS

§ 2. Registration of physicians; alien applicants; examinations; renewal; fees

Applications for registration as qualified physicians, signed and sworn to by the applicants, shall be made upon blanks furnished by the board of registration in medicine, herein and in sections three to nine A, inclusive, called the board. Each applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over and of good moral character, that he has completed two years of premedical studies in a college or university, that he has attended courses of instruction for four years of not less than thirty-two school weeks in each year, or courses which in the opinion of the board are equivalent thereto, in one or more legally chartered medical schools, and that he has received the degree of doctor of medicine, or its equivalent, from a legally chartered medical school in the United States or commonwealth of Puerto Rico or Canada having the power to confer degrees in medicine, shall upon payment of one hundred and twenty-five dollars, be examined, and, if found qualified by the board, be registered as a qualified physician and entitled to a certificate in testimony thereof, signed by the chairman and secretary. An applicant who has received from a medical school, legally chartered in a sovereign state other than the United States, the commonwealth of Puerto Rico or Canada, a degree of doctor of medicine or its equivalent shall be required to furnish to the board such documentary evidence as the board may require that his education is substantially the equivalent of that of graduates of medical schools in the United States and such other evidence as the board may require as to his qualifications to practice medicine, and shall, unless granted an exemption by the board, be required to present a Standard Certificate granted after examination by the Educational Council for Foreign Medical Graduates; provided, however, that an applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over and of good moral character, that he has completed two years of premedical studies in a college or university of the United States or Canada shall not be required to possess a certificate by the Educational Council for Foreign Medical Graduates and shall be admitted to the examination for licensure if he has studied medicine in a medical school outside the United States which is recognized by the World Health Organization, has completed all the formal requirements for the degree corresponding to doctor of medicine except internship and social service or internship or social service, has satisfactorily completed one academic year of supervised clinical training sponsored by an approved medical school in the United States or Canada, and has completed one year of graduate medical education in a program approved by the Liaison Committee on Graduate Medical Education of the American Medical Association. If the board shall be satisfied as to his education and his qualifications, the board shall, upon payment of one hundred and twenty-five dollars by the applicant, admit him to the examination for licensure.

An applicant failing to pass an examination satisfactory to the board shall be entitled to two reexaminations within two years at a meeting of the board called for the examination of applicants upon payment of a further fee of seventy-five dollars for each reexamination; but two such reexaminations shall exhaust his privilege under his original application.

The board may without examination grant certificates of registration as qualified physicians to such graduates of medical schools: (1) who shall furnish with their applications satisfactory proof that they have the qualifications required in the commonwealth to entitle them to be examined and have been licensed or registered upon a written examination in another state whose standards, in the opinion of the board, are equivalent to those in the commonwealth, or (2) who are diplomates of specialty boards recognized by the American Medical Association or the American Osteopathic Association; provided that any person who has previously attempted unsuccessfully to secure registration in the commonwealth shall be registered under the provisions of this paragraph without examination only at the discretion of the board. The fee for such registration without examination shall be seventy-five dollars.

Notwithstanding any other provisions of this chapter the board may without examination grant a certificate of registration as a qualified physician to such person as shall furnish with his application satisfactory evidence that he is: (1) a graduate of a Canadian medical school and is licensed by the Medical Council of Canada and by a provincial licensing authority; or (2) is licensed in the commonwealth of Puerto Rico or in the province of Saskatchewan in Canada upon obtaining a grade of seventy-five per cent or better in the federation licensing examination of the federation of state medical boards of the United States. Any person granted a certificate of registration under the provisions of this paragraph shall pay a fee of seventy-five dollars.

The board shall require that all physicians registered in the commonwealth renew their certificates of registration with the board effective January the fifteenth, nineteen hundred and seventy-six and at two year intervals thereafter. The renewal application shall be accompanied by a fee of fifty dollars and shall include the physician's name, license number, home address, office address, his specialty or specialties, the principal setting of his practice, and whether he is an active or inactive practitioner.

The board shall mail a renewal application to each registered physcian sixty days prior to the renewal date. The certification of registration of any physician who does not file a completed renewal application together with the fee shall be automatically revoked, but shall be revived upon completion of the renewal process. The expenses and compensation of the board of registration and discipline in medicine shall be paid by the commonwealth, but said expenses and compensation shall not be in excess of the amounts received by the commonwealth for certificates of renewal or any registration fees under this section.

Amended by St.1933, c. 171, § 1; St.1936, c. 247, §§ 1, 2; St.1938, c. 210; St.1939, c. 415, § 1; St.1939, c. 451, § 37; St.1941, c. 722, § 9; St.1945, c. 396, §§ 1, 2; St.1946, c. 365; St.1948, c. 28; St.1948, c. 413; St.1952, c. 585, § 21; St.1954, c. 519, § 1; St.1955, c. 622; St.1957, c. 329; St. 1959, c. 344, § 1; St.1960, c. 177; St.1960, c. 367; St.1966, c. 299, § 21; St.1966, c. 299; St.1969, c. 426, §§ 1, 2; St.1970, c. 540; St.1971, c. 662; St.1972, c. 372; St.1973, c. 312; St.1973, c. 925, § 16; St.1974, c. 395; St.1974, c. 723, §§ 1, 2; St.1975, c. 138; St.1975, c. 362, § 2; St.1979, c. 58, § 2.

§ 2A. Acceptance of certificate in lieu of examination; fee

In determining the qualifications necessary for registration as a qualified physician, the board may at its discretion accept the certificate of the National Board of Medical Examiners of the United States, chartered under the laws of the District of Columbia, or the certificate of the National Board of Examiners for Osteopathic Physicians and Surgeons of the American Osteopathic Association, in place of and as equivalent to its own professional examination; but before registration in pursuance of this section the applicant therefor shall pay a fee of seventy-five dollars.

Amended by St.1945, c. 396, § 3; St.1954, c. 519, § 2; St.1959, c. 344, § 2.

§ 2B. Schools for training medical laboratory technologists; inspection; approval; approving authority

No person shall operate or maintain a school for training medical laboratory technologists unless such school has been approved in writing by the approving authority established by section two, provided, however, that for the purposes of this section only, the membership of said authority shall be increased by three members to be appointed for a term of three years each by the governor with the advice and consent of the council, one member to be a hospital administrator or hospital trustee, who shall be a member of the Massachusetts Hospital Association; one member to be a medical laboratory technologist meeting the training and experience requirements of the American Medical Association, to be appointed from a list submitted by the Massachusetts Association of Technologists and Laboratory Technicians, Incorporated; and one member to be a physician, appointed from a list submitted by the section of physiology and pathology of the Massachusetts Medical Society. Said additional members shall serve without compensation, but may be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties.

A school for training of medical laboratory technologists shall mean a school maintained or classes conducted for the purpose of training two or more individuals to perform or assist in the performance of various medical laboratory procedures used in the diagnosis, treatment and study of disease, but shall not be construed to apply to duly accredited colleges and graduate schools teaching courses in physiology, biochemistry, bacteriology, clinical pathology or the various other medical sciences.

The provisions of section two relating to the inspection and approval of colleges, universities and medical schools by the approving authority shall apply to schools for the training of medical laboratory technologists.

Whoever being the educational director or the business director of a school for training of medical laboratory technologists violates the provisions of this section shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment.

Added by St.1955, c. 759, § 1.

§ 2C. Schools for training medical X-ray technicians; approval; inspection; approving authority

No person shall operate or maintain a school for training medical X-ray technicians unless such school has been approved by the approving authority established by section two; provided, however, that for the purposes of this section only, the membership of said authority shall be increased by three members to be appointed for a term of three years each by the governor with the advice and consent of the council, one member to be a radiologist who is a member of the section on radiology of the Massachusetts Medical Society; one member to be a member of the Massachusetts Hospital Association; and one member to be an X-ray technician who is a member of the Massachusetts Society of X-ray Technicians and certified by the American Registry of X-ray Technicians of Minneapolis, Minnesota. Said additional members shall serve without compensation, but may be reimbursed for their travel and other reasonable expenses incidental to the performance of their duties. The provisions of section two relating to the inspection and approval of colleges, universities and medical schools by the approving authority shall apply to schools for the training of medical X-ray technicians. A school for training medical X-ray technicians shall mean a school or classes conducted for the purpose of training two or more individuals to perform various medical X-ray procedures used in the diagnosis, treatment or study of disease. Any person who operates or maintains a school for training medical X-ray technicians and who violates the provisions of this section shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than six months, or both.

Added by St.1957, c. 655, § 1.

§ 3. Examinations

Examinations shall be in whole or in part in writing, in English, shall be of a scientific and practical character, shall include the subjects of anatomy, surgery, chemistry, biology, physics, physiology, pathology, obstetrics, gynaecology, psychiatry, practice of medicine and hygiene and shall be sufficiently thorough to test the applicants' fitness to practice medicine. The board may employ expert assistance in conducting hospital and laboratory tests.

§ 4. Records; annual report

The board shall keep a record of the names of all persons registered by it and of all money received and disbursed by it, and a duplicate thereof shall be open to inspection in the office of the state secretary. The board shall make an annual report, including a statement of the condition of medicine and surgery in the commonwealth.

§ 5. Investigation of complaints; hearing; disciplinary action; rules and regulations; immunity from suits for complaints filed in good faith

The board shall investigate all complaints relating to the proper practice of medicine by any person holding a certificate of registration under sections two to twelve A, inclusive, or of section sixty-five so far as it relates to medicine and report the same to the proper prosecuting officers.

The board may, after a hearing pursuant to chapter thirty A, revoke, suspend, or cancel the certificate of registration, or reprimand, censure, or otherwise discipline a physician registered under said sections upon proof satisfactory to a majority of the board that said physician:

(*a*) fraudulently procured said certificate of registration;

(*b*) is guilty of an offense against any provision of the laws of the commonwealth relating to the practice of medicine, or any rule or regulation adopted thereunder;

(*c*) is guilty of gross misconduct in the practice of medicine or of practicing medicine fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross negligence on a particular occasion or negligence on repeated occasions;

(*d*) is guilty of practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability or mental instability;

(*e*) is guilty of being habitually drunk or being or having been addicted to, dependent on, or a habitual user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

(*f*) is guilty of knowingly permitting, aiding or abetting an unlicensed person to perform activities requiring a license for purposes of fraud, deception or personal gain, excluding activities permissible under any provision of the laws of the commonwealth relative to the training of medical providers in authorized health care institutions and facilities;

(*g*) has been convicted of a criminal offense which reasonably calls into question his ability to practice medicine;

(*h*) is guilty of violating any rule or regulation of the board, governing the practice of medicine.

The board shall, after proper notice and hearing, adopt rules and regulations governing the practice of medicine in order to promote the public health, welfare, and safety and nothing in this section shall be construed to limit this general power of the board.

No person filing a complaint or reporting or providing information concerning another person pursuant to this section shall be liable in any cause of action arising out of such information, provided the person making such complaint or reporting or providing such information does so in good faith and without malice.

If the physician is found not guilty the board shall forthwith order a dismissal of the charges and the exoneration of the accused.

Amended by St.1937, c. 425, § 12; St.1975, c. 362, § 3; St.1977, c. 165; St.1977, c. 623.

§ 6. Penalties

Except as provided in section sixty-five, whoever, not being lawfully authorized to practice medicine within the commonwealth and registered under section two, or corresponding provisions of earlier laws, or under section one or two of chapter five hundred and twenty-six of the acts of nineteen hundred and nine, holds himself out as a practitioner of medicine or practices or attempts to practice medicine in any of its branches, or whoever practices medicine under a false or assumed name or under a name other than that by which he is registered, or whoever personates another practitioner, or whoever practices or attempts to practice any fraud in connection with the filing of an application, or whoever files an application under a false or assumed name or under a name other than his own, or whoever personates or attempts to personate another applicant for registration during an examination, shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment for not less than one month nor more than one year, or both. A person rendering medical service in violation of this section shall recover no compensation therefor.

§ 7. Application of sections 2 to 6 and section 8

Sections two to six, inclusive, and section eight shall not be held to discriminate against any particular school or system of medicine, to prohibit medical or surgical service in a case of emergency, or to prohibit the domestic administration of family remedies. They shall not apply to a professional nurse with appropriate education in the practice of the profession as defined by section eighty B, a commissioned medical officer of the United States army, navy or marine hospital service in the performance of his official duty; to an interne or medical officer registered as provided in section nine, while engaged in the practice of medicine as authorized by said section; to an assistant in medicine registered as provided in section nine A, while engaged in the practice of medicine as authorized by said section; to a physician or surgeon resident in another state who is a legal practitioner therein, when in actual consultation with a legal practitioner of this commonwealth; to a physician authorized to practice medicine in another state, when he is called as the family physician to attend a person temporarily abiding in this commonwealth; nor to registered pharmacists in prescribing gratuitously, clairvoyants or persons practicing hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any provision of the preceding section.

Amended by St.1975, c. 846, § 1.

§ 8. Recording of certificate of registration by city or town clerk; fee; records

No person shall enter upon, or continue in, the practice of medicine within the commonwealth until he has presented to the clerk of the city or town where he has, or intends to have, an office or his usual place of business, his certificate of registration as a physician in the commonwealth, or, if it is lost, a certified statement issued by the board, setting forth all the material facts in the original certificate, and paying the fee provided by clause (58) of section thirty-four of chapter two hundred and sixty-two. Thereupon the clerk shall record the name of the owner of said certificate or certified statement, together with the date of record, upon blanks approved by the board, said blanks to be so arranged that a duplicate carbon copy shall be made at the time of the original record. He shall keep the original as a part of his official records and it shall be open to public inspection. He shall, within twenty-four hours after such recording, forward the duplicate to the board. Whoever practices or attempts to practice medicine without complying with this section, or whoever submits to a city or town clerk a false or fraudulent certificate or certified statement, shall be punished by a fine of not less than five nor more than one hundred dollars; and any city or town clerk who refuses or neglects to comply with this section shall be punished by a fine of not less than five nor more than ten dollars.

Amended by St.1948, c. 550, § 18.

§ 9. Limited registration of internes; fees; revocation

An applicant for limited registration under this section may, upon payment of five dollars, be registered by the board as an intern, fellow or medical officer for such time as it may subscribe if he furnishes the board with satisfactory proof of the following:

1. He is eighteen or over and of good moral character.

2. (*a*) He has creditably completed two years of a premedical course of study in a college or university and not less than three and one-half years of study in a legally chartered medical school having the power to grant degrees in medicine; or (*b*) if he is not enrolled in or a graduate of a legally chartered medical school in the United States or Canada, he is the holder of a standard certificate granted after an examination by the Education Council for Foreign Medical Graduates, unless granted an exemption by the board; or (*c*) he has completed two years of premedical education in a college or univer-

sity of the United States, Canada or Puerto Rico and if he has studied medicine in a medical school outside the United States, Canada or Puerto Rico which is recognized by the World Health Organization, has completed all the formal requirements for the degree corresponding to doctor of medicine, except internship and social service, and has completed a year of clinical clerkship approved by the liaison committee on medical education of the American Medical Association.

3. He has been appointed an intern, fellow or medical officer in a hospital or other institution of the commonwealth, or of a county or municipality thereof, or in a hospital or clinic which is incorporated under the laws of the commonwealth or in a clinic which is affiliated with a hospital licensed by the department of public health under authority of section seventy-one of chapter one hundred and eleven, or in an out-patient clinic operated by the department of mental health, or in the department of public health for duty in clinics or in programs operated or approved by the department of public health, or in programs approved by the board of registration in medicine in the commonwealth and leading toward certification by specialty boards recognized by the American Medical Association.

Such limited registration shall entitle the said applicant to practice medicine only in the hospital, institution, clinic or program designated on his certificate of limited registration, or outside such hospital, institution, clinic or program for the treatment, under supervision of one of its medical officers who is a duly registered physician, of persons accepted by it as patients, or in any hospital, institution, clinic or program affiliated for training purposes with the hospital, institution, clinic or program designated on such certificate, which affiliation is approved by the board and in any case under regulations established by such hospital, institution, clinic or program. The name of any hospital, institution, clinic or program so affiliated and so approved shall also be indicated on such certificate. Limited registration under this section may be revoked at any time by the board.

Amended by St.1933, c. 152; St.1945, c. 186; St.1955, c. 526; St.1960, c. 483; St.1962, c. 578; St.1973, c. 925, § 17; St.1973, c. 1060, § 1; St. 1977, c. 252.

§ 9A. Medical students; limited practice of medicine under supervision

A student of medicine who has creditably completed not less than two years of study in a legally chartered medical school wherever located may practice medicine, but only under the supervision of an instructor in a legally chartered medical school, which instructor shall be a registered physician in the commonwealth and a duly appointed staff physician in the duly licensed hospital of not less than twenty-five beds, or an associated clinic, to which the student may be assigned. The board may, in its discretion from time to time, designate other facilities or locations in which said student may practice medicine under the conditions described above. Said students of medicine shall not sign certificates of births or deaths, nor prescribe or dispense narcotic drugs as defined in section one of chapter ninety-four C.

Amended by St.1963, c. 780; St.1966, c. 527; St.1972, c. 534; St.1976, c. 106.

§ 9B. Temporary registration of qualified physician; fees

Temporary registration as a qualified physician may be granted (1) to a visiting physician holding a license to practice in another state or territory or in the District of Columbia or in another country and having a temporary faculty appointment certified by the dean of a medical school in the commonwealth for purposes of medical education in an accredited hospital associated with the medical school, such registration to terminate automatically upon termination of the faculty appointment and, in any event, at the end of three years; (2) to a physician holding a license to practice in another state or territory or in the District of Columbia to permit him to act as a substitute physician for a registered physician in the commonwealth, to be granted only upon written request of said registered physician and to be limited to three months or less; (3) to a physician eligible for examination or registration in the commonwealth who is a diplomate of a specialty board approved by the American Medical Association or the American Osteopathic Association to permit him to act as a substitute physician for a registered physician in the commonwealth to be granted only upon written request of said registered physician, to be limited to the specialty in which the applicant is certified and to be limited to three months or less; (4) to a physician holding a license to practice in another state or territory or in the District of Columbia or in another country and enrolled in a course of continuing medical education, such registration to terminate automatically upon termination of the course and, in any event, at the end of three months. The fee for such temporary registration shall be fifty dollars.

Added by St.1970, c. 325. Amended by St.1972, c. 486; St.1979, c. 643.

§ 9C. Definitions applicable to this section and sections 9D to 9H

As used in sections nine C to nine H, inclusive, the following words shall have the following meanings:

"Board", the board of approval and certification of physician assistant programs.

"Health care facility", any hospital, nursing home, extended care facility, state health or mental institution, clinic, physician's office, or health maintenance organization licensed or otherwise operating legally within the commonwealth.

"Approved program", a program for the education and training of physician assistants approved by the board.

"Physician assistant", a person who is a graduate of an approved program.

"Physician assistant trainee", a person enrolled in an approved program.

Added by St.1973, c. 937, § 1.

§ 9D. Applicability of sections 9C to 9H

The provisions of sections nine C to nine H, inclusive, shall not apply to services performed in any of the following areas:

(*a*) The practice of dentistry or dental hygiene as defined in sections fifty and fifty-one.

(*b*) The practice of manipulative therapy or chiropractic.

(*c*) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive states of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(*d*) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(*e*) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to the human eye.

(*f*) The practice of podiatry as defined in section thirteen.

Nothing in clauses (*c*), (*d*), or (*e*) shall preclude the performance of routine visual screening by a physician assistant.

The provisions of sections nine C to nine H, inclusive, shall not apply to the practice of ophthalmology or to the use of trained assistants by ophthalmologists.

Added by St.1973, c. 937, § 1.

§ 9E. Physician assistants; medical services; supervision; legal responsibility

Notwithstanding any other provisions of law, a physician assistant may perform medical services when such services are rendered under the supervision of a registered physician. Such supervision shall be continuous but shall not require the personal presence of the supervising physician or physicians. A registered physician shall supervise no more than two physician assistants at any one time.

Physician assistants, depending upon their level of professional training and experience as determined by a supervising physician, may perform medical services of a general nature in assisting general practitioners in his own practice, in group practices, or in health care facilities.

If a physician assistant is employed by a physician or group of physicians, the assistant shall be supervised by and shall be the legal responsibility of the employing physician or physicians. The legal responsibility of such an assistant shall remain that of the employing physician or physicians at all times including occasions when the assistant, under the direction and supervision of the employing physician or physicians, aids in the care and treatment of patients in health care facilities. Such health care facilities shall not be legally responsible for the actions or omissions of the physician assistant.

If a physician assistant is employed by a health care facility the legal responsibility for his actions and omissions shall be that of the employing facility. Such physician assistants shall be supervised by registered physicians. Such physician assistants employed by health care facilities shall not be utilized as the sole medical personnel in charge of emergency or outpatient services or any other clinical service where a physician is not regularly available.

Notwithstanding any other provision of the law, a physician assistant trainee may perform medical services when such services are rendered within the scope of a program approved under section nine G.

Added by St.1973, c. 937, § 1.

§ 9F. Board of approval and certification of physician assistant programs

There shall be in the department of public health a board of approval and certification of physician assistant programs consisting of nine persons, residents of the commonwealth, to be appointed by the governor, as follows:—Two members shall be registered physicians who shall have been actively engaged in the practice of medicine and at least one of whom shall be a member of the Massachusetts Medical Society; one member shall be a representative of a legally chartered medical school located in the commonwealth; one member shall be a representative of a program for the training of physician assistants; one member shall be an administrator of a health care facility located and licensed in the commonwealth; one member shall be a registered nurse who is a member of the Massachusetts Nurses Association; two members shall be representatives of the general public not employed in any health-related field; and one member shall be a physician assistant.

The board shall elect its chairman annually and shall meet at the call of the chairman or upon the request of two or more members of the board. Members shall be appointed for terms of three years each, and no member shall serve more than two consecutive terms. A quorum shall consist of at least five members present. Board members shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

Added by St.1973, c. 937, § 1.

§ 9G. Certificates of approval for physician assistant programs; standards; continuing education; review; certification of graduates; employment; fees; records and reports

The board shall issue certificates of approval of programs for the education and training of physician assistants which meet the standards established by the board.

In developing criteria for program approval, the board shall give consideration to, and encourage, the utilization of equivalency and proficiency testing and other mechanisms whereby credit is given to trainees for past education and experience in health fields. The board, in developing criteria for approved programs and in approving such programs may accept as approved programs those that have been certified by a nationally recognized accrediting agency or organization.

The board shall adopt regulations concerning the quality of education and clinical training to be received by a physician assistant trainee and the supervision of a physician assistant trainee.

The board shall encourage the development of continuing education for physician assistants. The board shall periodically review the quality of the curriculum, faculty, and the facilities of approved programs.

On request of a physician or health care facility the board shall certify that an applicant for a position as a physician assistant is a graduate of an approved program.

The board shall adopt advisory guidelines for the employment of physician assistants. Upon employing a physician assistant, an employer shall, upon forms designed and made available by the board, immediately advise the board of the employment of the physician assistant. Upon the termination of the employment of a physician assistant an employer shall forthwith notify the board.

The board shall not permit any one physician to employ more than two physician assistants at any one time. Such restriction shall not apply to employment by health care facilities, but no physician in such health care facilities shall supervise more than two physician assistants.

The board may establish such fees as are necessary for the implemention of this section.

Any such fees shall be published and made known to the public. Any alteration of said fees shall not become effective until thirty days following adequate public notice thereof.

The board shall maintain a current compilation of:

(*a*) The number, description and location of each approved program.

(*b*) A roster of graduates of approved programs conducted in the commonwealth.

(*c*) A roster of currently practicing physician assistants and their employers, and their locations in the commonwealth.

Such information shall be reported to the governor and general court at least annually on or before the last Wednesday of November.

Added by St.1973, c. 937, § 1.

§ 9H. Unauthorized use of title of "Physician assistant"; penalty

No person who is not a graduate of an approved program for the training of physician assistant shall use the title of "Physician assistant" or hold himself out as a graduate of an approved program. Any person who violates this section shall be punished by a fine of not less than two hundred dollars.

Added by St.1973, c. 937, § 1.

§ 10. Application of medicine and its practice to osteopathy and its practice

The provisions of this chapter with reference to medicine and its practice shall apply to and include osteopathy and its practice, when such construction is not inconsistent with the following section.

§ 11. Prohibition of certain acts by osteopaths

No person now registered as an osteopath under section one or two of chapter five hundred and twenty-six of the acts of nineteen hundred and nine shall prescribe or administer drugs for internal use, perform major operations in surgery, engage in the practice of obstetrics, or hold himself out, by virtue of such registration, as and for other than an osteopath. Violation hereof shall be punished by the penalty provided in section six.

§ 12. Disclosure of information relative to venereal disease by registered physician

Any registered physician or surgeon who knows or has reason to believe that any person is infected with a venereal disease as defined under section six of chapter one hundred and eleven may disclose such information to any person from whom the infected person has received a promise of marriage or to the parent or guardian of such person if a minor. Such information given in good faith by a registered physician or surgeon shall not constitute a slander or libel.

Amended by St.1948, c. 129, § 7.

§ 12A. Report of treatment of wounds; application of section

Every physician attending or treating a case of bullet wound, gunshot wound, powder burn or any other injury arising from or caused by the discharge of a gun, pistol, BB gun, or other air rifle or other firearm, or, whenever any such case is treated in a hospital, sanitarium or other institution, the manager, superintendent or other person in charge thereof, shall report such case at once to the commissioner of public safety and to the police authorities of the town where such physician, hospital, sanitarium or institution is located. This section shall not apply to such wounds, burns or injuries received by any member of the armed forces of the United States or of the commonwealth while engaged in the actual performance of duty. Every physician attending or treating a case of a wound or injury caused by a knife or a sharp or pointed instrument shall, if in his opinion a criminal act was involved, report such case forthwith to the police authorities of the town in which he attended or treated such wound or injury. Whoever violates any provision of this section shall be punished by a fine of not less than fifty nor more than one hundred dollars.

Amended by St.1943, c. 41; St.1962, c. 407; St.1963, c. 108.

§ 12B. Emergency care of injured persons; exemption from civil liability

No physician duly registered under the provisions of section two or two A and no nurse duly registered or licensed under the provisions of section seventy-four, seventy-four A or seventy-six, or resident in another state, in the District of Columbia or in a province of Canada, and duly registered therein who, in good faith, as a volunteer and without fee, renders emergency care or treatment, other than in the ordinary course of his practice, shall be liable in a suit for damages as a result of his acts or omissions, nor shall he be liable to a hospital for its expenses if, under such emergency conditions, he orders a person hospitalized or causes his admission.

Added by St.1962, c. 217. Amended by St.1964, c. 59; St.1965, c. 578; St.1967, c. 374; St.1969, c. 343.

§ 12C. Immunity of physician or nurse

No physician or nurse administering immunization or other protective programs under public health programs shall be liable in a civil suit for damages as a result of any act or omission on his part in carrying out his duties.

Added by St.1967, c. 309, § 2.

§ 12D. Prescriptions of interchangeable drug products listed in formulary; forms; requisites; definitions

As used in this section, the following words shall, unless the context clearly requires otherwise, have the following meanings:—

"Department", the department of public health.

"Interchangeable drug product", a product containing a drug in the same amounts of the same active ingredients in the same dosage form as other products with the same generic or chemical name.

"Practitioner", a physician, dentist, veterinarian, podiatrist, scientific investigator or other person registered to distribute, dispense, conduct research with respect to, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research in the commonwealth.

Every prescription written in the commonwealth by a practitioner shall be on prescription forms approved by the department containing two lines for the practitioner's signature. Alongside the first line shall be clearly printed the words "interchange permitted". Alongside the second signature line shall be clearly printed the words "dispense as written". The practitioner by placing his signature on the appropriate signature line shall indicate his dispensing instructions to the pharmacist.

Failure of the practitioner to affix his signature on one of the designated lines shall invalidate the prescription.

In cases where interchange is permitted as indicated by the signature of the practitioner on the first signature line, the pharmacist shall dispense a less expensive reasonably available interchangeable drug product as listed in the most current formulary or supplement thereof. The pharmacist shall also indicate on the label in the following manner the fact of interchange:

"Interchange (*name of drug product dispensed*)"

In cases where the practitioner has instructed that the pharmacist dispense as written, the pharmacist shall dispense the exact drug product as written by the practitioner.

In the event of noncompliance by a pharmacist, the drug purchaser may inform the secretary of the executive office of consumer affairs of such noncompliance. Said secretary shall refer the matter to the board of registration in pharmacy and, where appropriate, to the board of registration and discipline in medicine, for appropriate action.

Added by St.1970, c. 717, § 2. Amended by St.1976, c. 470, § 2; St.1977, c. 707.

§ 12E. Drug dependent minors; consent to medical care; liability for payment; records

A minor twelve years of age or older who is found to be drug dependent by two or more physicians may give his consent to the furnishing of hospital and medical care related to the diagnosis or treatment of such drug dependency. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent or legal guardian of such minor shall not be necessary to authorize hospital and medical care related to such drug dependency and, notwithstanding any provision of section fifty-four of chapter one hundred and twenty-three to the contrary, such parent or legal guardian shall not be liable for the payment of any care rendered pursuant to this section. Records shall be kept of such care. The provisions of this section shall not apply to methadone maintenance therapy.

Added by St.1970, c. 816. Amended by St.1973, c. 430, § 8A.

§ 12F. Emergency treatment of minors; absence of consent; immunity of physicians, dentists, clinics, and hospitals; confidential records

No physician, dentist or hospital shall be held liable for damages for failure to obtain consent of a parent, legal guardian, or other person having custody or control of a minor child, or of the spouse of a patient, to emergency examination and treatment, including blood transfusions, when delay in treatment will endanger the life, limb, or mental well-being of the patient.

Any minor may give consent to his medical or dental care at the time such care is sought if (*i*) he is married, widowed, divorced; or (*ii*) he is the parent of a child, in which case he may also give consent to medical or dental care of the child; or (*iii*) he is a member of any of the armed forces; or (*iv*) she is pregnant or believes herself to be pregnant; or (*v*) he is living separate and apart from his parent or legal guardian, and is managing his own financial affairs; or (*vi*) he reasonably believes himself to be suffering from or to have come in contact with any disease defined as dangerous to the public health pursuant to section six of chapter one hundred and eleven; provided, however, that such minor may only consent to care which relates to the diagnosis or treatment of such disease.

Consent shall not be granted under subparagraphs (*ii*) through (*vi*), inclusive, for abortion or sterilization.

Consent given under this section shall not be subject to later disaffirmance because of minority. The consent of the parent or legal guardian shall not be required to authorize such care and, notwithstanding any other provisions of law, such parent or legal guardian shall not be liable for the payment for any care rendered pursuant to this section unless such parent or legal guardian has expressly agreed to pay for such care.

No physician or dentist, nor any hospital, clinic or infirmary shall be liable, civilly and criminally, for not obtaining the consent of the parent or legal guardian to render medical or dental care to a minor, if, at the time such care was rendered, such person or facility: (*i*) relied in good faith upon the representations of such minor that he is legally able to consent to such treatment under this section; or (*ii*) relied in good faith upon the representations of such minor that he is over eighteen years of age.

All information and records kept in connection with the medical or dental care of a minor who consents thereto in accordance with this section shall be confidential between the minor and the physician or dentist, and shall not be released except upon the written consent of the minor or a proper judicial order. When the physician or dentist attending a minor reasonably believes the condition of said minor to be so serious that his life or limb is endangered, the physician or dentist shall notify the parents, legal guardian or foster parents of said condition and shall inform the minor of said notification.

Added by St.1970, c. 847. Amended by St.1971, c. 335, § 1; St.1975, c. 564.

§ 12G. Disclosure of information by physicians or hospitals to governmental agencies concerning patients in connection with eligibility for certain health care benefits; absence of consent; civil or criminal liability

The disclosure by a physician, a hospital or by an agent of either of any information concerning the diagnosis, treatment, or condition of a patient in connection with the establishment of eligibility for, or entitlement to, benefits under chapters one hundred and fifteen, one hundred and seventeen, one hundred and eighteen, one hundred and eighteen A, one hundred and eighteen D, one hundred and eighteen E or in connection with any reporting required by law under chapters ninety-four, one hundred and eleven, one hundred and twelve, one hundred and twenty-three, or required by any other law, shall not constitute libel, slander, invasion of privacy, or otherwise be grounds for any civil or criminal liability on the part of any such physician, hospital or agent of either who, without first obtaining consent from a patient or a patient's next of kin, discloses such information to any department, bureau or commission of the commonwealth or to any federal agency which, by law, requires such information or which provides health care benefits to eligible recipients who apply therefor.

Added by St.1971, c. 335, § 2.

§ 12H. Prescriptions on hospital or clinic blanks; printing of physician's name required

Any physician who writes a prescription upon a prescription blank of a hospital or clinic shall print or type his name directly below his signature thereon.

Added by St.1973, c. 173, § 1.

§ 12*I*. Abortion or sterilization procedures; refusal of hospital or health facility staff members or employees to participate

A physician or any other person who is a member of or associated with the medical staff of a hospital or other health facility or any employee of a hospital or other health facility in which an abortion or any sterilization procedure is scheduled and who shall state in writing an objection to such abortion or sterilization procedure on moral or religious grounds, shall not be required to participate in the medical procedures which result in such abortion or sterilization, and the refusal of any such person to participate therein shall not form the basis for any claim of damages on account of such refusal or for any disciplinary or recriminatory action against such person.

The refusal of any person who has made application to a medical or premedical program in the commonwealth to agree to counsel, suggest, recommend, assist, or in any way participate in the performance of an abortion or sterilization contrary to his religious beliefs or moral convictions shall not form the basis for any discriminatory action against such person.

Added by St.1973, c. 521, § 1. Amended by St.1979, c. 216.

§ 12J. Experimentation on human fetuses prohibited; medical procedures authorized; consent; approval; civil and criminal liability and proceedings; severability

(*a*) I. No person shall use any live human fetus, whether before or after expulsion from its mother's womb, for scientific, laboratory, research or other kind of experimentation. This section shall not prohibit procedures incident to the study of a human fetus while it is in its mother's womb, provided that in the best medical judgment of the physician, made at the time of the study, said procedures do not substantially jeopardize the life or health of the fetus, and provided said fetus is not the subject of a planned abortion. In any criminal proceeding a fetus shall be conclusively presumed not to be the subject of a planned abortion if the mother signed a written statement at the time of the study, that she was not planning an abortion.

This section shall not prohibit or regulate diagnostic or remedial procedures the purpose of which is to determine the life or health of the fetus involved or to preserve the life or health of the fetus involved or the mother involved.

A fetus is a live fetus for purposes of this section when, in the best medical judgment of a physician, it shows evidence of life as determined by the same medical standards as are used in determining evidence of life in a spontaneously aborted fetus at approximately the same stage of gestational development.

(*a*) II. No experimentation may knowingly be performed upon a dead fetus unless the consent of the mother has first been obtained, provided, however, that such consent shall not be required in the case of a routine pathological study. In any criminal proceeding, consent shall be conclusively presumed to have been granted for the purposes of this section by a written statement, signed by the mother who is at least eighteen years of age, to the effect that she consents to the use of her fetus for scientific, laboratory, research or other kind of experimentation or study; such written consent shall constitute lawful authorization for the transfer of the dead fetus.

(*a*) III. No person shall perform or offer to perform an abortion where part or all of the consideration for said performance is that the fetal remains may be used for experimentation or other kind of research or study.

(*a*) IV. No person shall knowingly sell, transfer, distribute or give away any fetus for a use which is in violation of the provisions of this section. For purposes of this section, the word "fetus" shall include also an embryo or neonate.

(*a*) V. Except as hereafter provided, whoever violates the provisions of this section shall be punished by imprisonment in a jail or house of correction for not less than one year nor more than two and one-half years or by imprisonment in the state prison for not more than five years and by the imposition of a fine of up to ten thousand dollars.

(*a*) VI. In any criminal action under this subsection (*a*), it shall be a complete defense that at the time of its performance the subject procedure had received the written approval of a duly appointed Institutional Review Board provided that such Board sets forth in its written approval that the procedure does not violate the provisions of this subsection (*a*) and sets forth therein a reasonable basis for such conclusion and provided that there was not outstanding, at any time that the subject procedure was being performed, a judgment of a court entered pursuant to the provisions of subsection (*b*), that the subject procedure violates the provisions of this subsection (*a*). The written approval shall contain a detailed description of the procedure by attachment of a protocol or other writing or otherwise and shall be maintained as a permanent record by such Board or by the hospital or other institution for which the Board acts.

A copy of the written approval, together with any attached protocol or other writing, shall be filed with the office of the District Attorney for the county in which the hospital or other institution for which the board acts, is located. Such copy shall be available for public inspection at reasonable times. No member of an Institutional Review Board voting not to approve a procedure, or not present at such a vote, shall be criminally or civilly liable for such approval by the Institutional Review Board or for the performance of the procedure by others. No member of such a Board voting to approve a procedure shall be criminally or civilly liable for such approval by him or the performance of the procedure by others if, based on the written approval and the basis thereof referred to above, such a member acts on a good faith belief that the procedure does not violate the provisions of this section.

(*a*) VII. Where there is outstanding such a judgment that the subject procedure violates the provisions of this subsection (*a*), it shall not constitute a defense that the person performing said procedure did not receive notice, or otherwise know, of that judgment; provided, however, that until the District Attorney files a copy of the judgment prohibiting a procedure with the Commissioner of Public Health as provided in subsection (*b*) VII it shall constitute a defense that the person performing the subject procedure did not have notice of the judgment and that he had obtained the approval of the Institutional Review Board for the subject procedure as provided in subsection (*a*) VI.

(*b*) I. Whenever a procedure has been approved by a duly appointed Institutional Review Board which the District Attorney for the district where said procedure is performed has reasonable grounds to believe is prohibited under the provisions of subsection (*a*), he shall file a complaint in the Superior Court sitting in a county where the procedure is performed seeking a determination of whether said procedure violates the provisions of this statute. The complaint shall describe the procedure and the reason or reasons why there are reasonable grounds to believe that the said procedure is in violation of the provisions of this statute. The complaint shall name as defendants those persons within his jurisdiction whom the District Attorney reasonably believes have performed, are performing, or are about to perform, the described procedure and those institutions within his jurisdiction in which said procedure has been performed, is being performed, or is about to be performed; such defendants shall be served with a copy of the complaint and a summons in accordance with the provisions of Rule 4 of the Massachusetts Rules of Civil Procedure. Upon the filing of the complaint, notice thereof shall be given by the District Attorney, by certified or registered mail, to the Commissioner of Public Health, who in turn shall give the same notice to those institutions in the Commonwealth who, in the judgment of said Commissioner, may be affected by a judgment in the action, and in any event to all of the licensed medical schools in the Commonwealth.

(*b*) II. Any person or institution which has performed, is performing, or is about to perform, a procedure, may file a complaint in the Superior Court seeking a determination of whether said procedure violates the provision of this statute. Said determination may be sought irrespective of whether said procedure has been approved by an institutional review board. The complaint, which shall have attached thereto a copy of any protocol relative to said procedure, shall describe the procedure and state the reason or reasons which cause the plaintiff to seek the judicial determination. The complaint shall name the District Attorney for the district where the procedure is performed as defendant in the action and he shall be served with a copy of the complaint, including the attached protocol, if any, and the summons in accordance with the provisions of Rule 4 of the Massachusetts Rules of Civil Procedure. Service shall be made by delivery to the office of said District Attorney; or by mailing by certified or registered mail to said office. Upon receipt of service, notice shall be given by the District Attorney, by certified or registered mail, to the Commissioner of Public Health who in turn shall give notice to those institutions who in the judgment of said commissioner may be affected by a judgment in the action, and in any event to all of the licensed medical schools in the Commonwealth.

(*b*) III. Any person or institution desiring to intervene in the action may file a motion to intervene with the court in which the action is pending within ten days from the mailing of such notice, except that the court, for good cause shown, may allow said motion after the ten-day period. A copy of the motion to intervene shall also be served upon the District Attorney and upon the persons or institutions initiating the action or against whom the action has been initiated. The motion shall be signed and certified under oath by the applicant and shall state the grounds therefore showing that the applicant claims an interest in the issue of the lawfulness of the subject procedure in that he has performed said procedure, or that he is performing said procedure, or that he is about to perform said procedure, and that the disposition of the action may impair or impede his ability to perform or continue to perform said procedure. Upon a determination by the court that the applicant has satisfied the requirement of this section, the court shall allow the applicant to intervene in the action.

(*b*) IV. After service of the complaint upon an original party, such party shall serve and file an answer within twenty days unless otherwise directed by order of the court. The answer shall state whether, in the opinion of the pleader, the subject procedure is prohibited by the provisions of this statute and the reason or reasons for such opinion. An intervenor may serve and file a pleading in support of either the complaint or answer within ten days from receipt of notice of the granting of the motion to intervene. Unless the court otherwise orders, no response to the pleading of an intervenor is required.

(*b*) V. Any party may move for summary judgment, in accordance with Rule 56 of the Massachusetts Rules of Civil Procedure, or for judgment on the pleadings in accordance with Rule 12(*c*) of the Massachusetts Rules of Civil Procedure. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

(*b*) VI. Any trial on the merits shall be without a jury. The court shall find the facts specially and shall set forth in writing separately its findings of facts and conclusions of law thereon and shall enter judgment accordingly. Such judgment may be appealed to the Supreme Judicial Court. Until reversed, however, by the Supreme Judicial Court, such judgment shall constitute an in rem judgment, binding within the Commonwealth of Massachusetts, that the subject procedure is prohibited or is not prohibited by the provisions of this statute.

(*b*) VII. Upon the entry of a judgment that a procedure is prohibited by the provisions of this statute, the District Attorney shall promptly give notice by publication in a newspaper of general circulation in each of the counties of the Commonwealth and by sending notification by registered or certified mail to each licensed hospital and medical school in the Commonwealth; such notice shall contain a description of the prohibited medical procedure and shall state that the performance of such procedure constitutes a crime punishable under the provisions of this statute. A copy of all judgments and accompanying opinions permitting or prohibiting a procedure shall be filed by the District Attorney with the Commissioner of Public Health. The Commissioner of Public Health shall maintain a permanent file of such judgments and opinions for public inspection.

(*b*) VIII. Any action brought under this statute to determine whether a procedure is prohibited by the provisions of this statute and any appeal of a judgment that a procedure is or is not prohibited by the provisions of this statute shall be advanced for a prompt and speedy disposition consistent, however, with a reasonable opportunity being afforded to the parties to properly prepare the case.

(*b*) IX. If any section, subsection, paragraph, sentence or clause of this statute is held to be unconstitutional, such holding shall not affect the remaining portions of this statute.

Added by St.1974, c. 421. Amended by St.1976, c. 551.

§ 12K. Definitions applicable to sections 12L to 12U

As used in section twelve L to section twelve U, inclusive, the following words shall have the following meanings:

Abortion, the knowing destruction of the life of an unborn child or the intentional expulsion or removal of an unborn child from the womb other than for the principal purpose of producing a live birth or removing a dead fetus.

Hospital, a hospital as defined in section fifty-two of chapter one hundred and eleven of the General Laws, and duly licensed under the provisions of section fifty-one of chapter one hundred and eleven of the General Laws.

Physician, an individual lawfully authorized to practice medicine within the commonwealth.

Pregnancy, the condition of a mother carrying an unborn child.

Unborn child, the individual human life in existence and developing from fertilization until birth.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12L. Abortion; pregnancy existing for less than 24 weeks

If a pregnancy has existed for less than twenty-four weeks no abortion may be performed except by a physician and only if, in the best medical judgment of a physician, the abortion is necessary under all attendant circumstances.

Added by St.1974, c. 706, § 1. Renumbered by St.1977, c. 397.

§ 12M. Abortion; pregnancy existing for 24 weeks or more

If a pregnancy has existed for twenty-four weeks or more, no abortion may be performed except by a physician and only if it is necessary to save the life of the mother, or if a continuation of her pregnancy will impose on her a substantial risk of grave impairment of her physical or mental health.

Added by St.1974, c. 706, § 1. Renumbered by St.1977, c. 397.

§ 12N. Violation of section 12L or 12M; punishment

Any person who violates the provisions of sections twelve L or twelve M shall be punished by imprisonment for not less than one year nor more than five years. Conduct which violates the provisions of this act, which also violates any other criminal laws of the commonwealth, may be punished either under the provisions of sections 12K to 12U, inclusive, or under such other applicable criminal laws.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12O. Abortion performed pursuant to section 12M; protection of unborn child

If an abortion is performed pursuant to section twelve M, no abortion procedure which is designed to destroy the life of the unborn child or injure the unborn child in its mother's womb may be used unless, in the physician's best medical judgment, all other available procedures would create a greater risk of death or serious bodily harm to the mother either at the time of the abortion, or subsequently as the result of a future pregnancy, then the one being used.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12P. Abortion performed pursuant to section 12M; preservation of life and health of child

If an abortion is performed pursuant to section twelve M, the physician performing the abortion shall take all reasonable steps, both during and subsequent to the abortion, in keeping with good medical practice, consistent with the procedure being used, to preserve the life and health of the aborted child. Such steps shall include the presence of life-supporting equipment, as defined by the department of public health, in the room where the abortion is to be performed.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12Q. Restrictions on abortions performed under section 12L or 12M; emergency excepted

Except in an emergency requiring immediate action, no abortion may be performed under sections twelve L or twelve M unless the written informed consent of the proper person or persons has been delivered to the physician performing the abortion as set forth in section twelve S; and if the abortion is during or after the thirteenth week of pregnancy, it is performed in a hospital duly authorized to provide facilities for general surgery.

Except in an emergency requiring immediate action, no abortion may be performed under section twelve M unless performed in a hospital duly authorized to provide facilities for obstetrical services.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12R. Written statement of reasons for abortion as required by section 12M; tests on pregnant patients prior to abortions; report to commissioner, contents; filing; statistical tables, annual report to general court; additional reports

If the physician performing the abortion is not the physician who made the medical judgment required by section twelve M, before performing the abortion he shall obtain from the physician making such judgment a written statement setting forth the exception contained in section twelve M that in his best medical judgment permits the abortion and the specified reasons why the abortion qualifies under that exception. Prior to the performance of an abortion, the physician shall make a positive determination of pregnancy, test for blood type and Rh type, test for Rh$_0$ sensitization on each patient found to be Rh$_0$(D) negative by use of an antiglobulin (Coombs) test performed by a blood bank operated by a licensed hospital, or by a laboratory, and offer RH$_0$ (D) immune globulin (Human) to each Rh$_0$(D) negative patient with a negative sensitization test at the time of any abortion. The physician performing the abortion shall retain this written statement as an attachment to the file copy of his report required by this section. Within thirty days after the performance of an abortion, the physician performing such abortion shall file with the commissioner of public health on a form prescribed by him the following information to the best of his knowledge: the date and place of the abortion; if he was a physician making the medical judgment required by section twelve M, the exception contained in said section that in his best medical judgment permitted the abortion and the specific reasons why the abortion qualified under that exception; if he is not the physician who made such medical judgment, the name and address of the physician from whom he received the written statement required by this section and the exception contained in said section twelve M that permitted the abortion and a verbatim recitation of the specific reasons why the abortion qualified under either exception as set forth in the written statement he received from such physician; the age of the mother; the method used to perform the abortion; whether the mother survived the abortion; the details of any morbidity observed in the mother; the gestational age of the child; the weight and crown-rump length of the child if determinable; whether the unborn child was alive when removed or expelled from the mother and if so, the steps taken to preserve its life; and the length of time the child lived after removal or expulsion from the mother. The physician performing the abortion shall retain in his files for seven years after the abortion a copy of the report to which he should attach or otherwise add the name of the mother. The original of the report filed with the commissioner shall not contain the name of the mother and shall be maintained by the commissioner as a public record. The commissioner shall prepare from these reports such statistical tables with respect to maternal health, abortion procedures, the unborn child and viability as he deems useful and shall make an annual report thereof to the general court. Nothing in this section shall be construed to limit the authority of the department of public health to require reports pursuant to sections twenty-four A and twenty-five A of chapter one hundred and eleven.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397; St.1977, c. 497.

§ 12S. Consent to abortion; hearing; form; filing; civil remedies preserved

If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files.

Nothing in this section shall be construed as abolishing or limiting any common law rights of any other person or persons relative to consent to the performance of an abortion for purposes of any civil action or any injunctive relief under section twelve U.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12T. Violations of sections 12*O* to R; punishment

Any person who commits an act in violation of sections twelve O or twelve P shall be punished by a fine of not less than five hundred dollars nor more than two thousand dollars, or by imprisonment of not less than three months nor more than five years, or by both said fine and imprisonment. Conduct which violates sections twelve O or twelve P which also violates any other criminal laws of the commonwealth, may be punished either under this section or under such other applicable criminal laws. Any person who willfully violates the provisions of sections twelve Q or twelve R shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12U. Enjoining performance of abortion

The attorney general or any person whose consent is required either pursuant to section twelve S or under common law, may petition the superior court for an order enjoining the performance of any abortion that may be performed contrary to the provisions of section twelve L to twelve T, inclusive.

Added by St.1974, c. 706, § 1. Renumbered and amended by St.1977, c. 397.

§ 12V. Exemption of certain trained individuals rendering emergency cardiopulmonary resuscitation from civil liability

Any person who is currently certified by the American National Red Cross or the American Heart Association in cardiopulmonary resuscitation, or any person who has successfully met the training requirements of a course in basic emergency care of the unwitnessed cardiac arrest, conducted according to the standards established by the American Heart Association, who in good faith and without compensation renders emergency cardiopulmonary resuscitation in accordance with his training, other than in the course of his regular professional or business activity, to any person who apparently requires cardiopulmonary resuscitation, shall not be liable for acts or omissions, other than gross negligence or willful or wanton misconduct, resulting from the rendering of such emergency cardiopulmonary resuscitation.

Added by St.1977, c. 555.

§ 12W. Sterilization; physician to have written consent before performing surgical or medical procedure

No physician shall perform, other than in an emergency, an operation which is intended to result in the sterilization of an individual unless he has a knowledgeable consent in writing from such individual. A physician who performs said operation without such consent shall be punished by a fine of not more than ten thousand dollars.

Added by St.1977, c. 654.

§ 12X. Restrictive covenants upon physicians rendered unenforceable

Any contract or agreement which creates or establishes the terms of a partnership, employment, or any other form of professional relationship with a physician registered to practice medicine pursuant to section two, which includes any restriction of the right of such physician to practice medicine in any geographic area for any period of time after the termination of such partnership, employment or professional relationship shall be void and unenforceable with respect to said restriction; provided, however, that nothing herein shall render void or unenforceable the remaining provisions of any such contract or agreement.

Added by St.1977, c. 762, § 1.

REGISTRATION OF PODIATRISTS

§ 13. Podiatry; definition; application of sections 13 to 23

"Podiatry" as used in this chapter shall mean the diagnosis and the treatment of the structures of the human foot by medical, mechanical, surgical, manipulative and electrical means without the use of other than local anesthetics, and excepting treatment of systemic conditions, and excluding amputation of the foot or toes. This and the ten following sections shall not apply to surgeons of the United States army, navy or of the United States Public Health Service, nor to physicians registered in the commonwealth. The term physician and surgeon when used in sections twelve B, twelve G, twenty-three N and eighty B shall include a podiatrist acting within the limitation imposed by this section.

Amended by St.1937, c. 425, § 2; St.1956, c. 344; St.1970, c. 443, § 17; St.1978, c. 220.

§ 14. Practice of podiatry; holding out as a registered podiatrist

No person shall practice or attempt to practice podiatry in the commonwealth, or hold himself out as a podiatrist, or designate himself, or describe his occupation, by the use of any words or letters calculated to lead others to believe that he is a registered podiatrist, unless he is registered as provided in section sixteen.

Amended by St.1937, c. 425, § 3; St.1970, c. 443, § 18.

§ 15. Preparation and distribution of forms for applications for registration; examinations

The board of registration in podiatry, in sections sixteen to twenty-two, inclusive, called the board, shall prepare and distribute forms of applications for registration, certificates of registration and such other documents as may be necessary or convenient in carrying out sections thirteen to twenty-three, inclusive. It shall hold at least two examinations annually, at times and places to be designated by it, after due notice of the same by publication at least twice a week for three successive weeks in one or more newspapers published in the county where the examination is to be held, and it may hold other examinations as it deems necessary or proper.

Amended by St.1937, c. 425, § 4; St.1970, c. 443, § 19.

§ 16. Registration of podiatrists; application; fees; examinations and reexaminations; certificate; registration without examination; revocation; approval of schools

Applications for registration, signed and sworn to by the applicant, shall be made upon blanks furnished by the board. If an applicant furnishes the board with satisfactory proof that he is eighteen and of good moral character, and that he is a graduate of a high school or its equivalent, and has completed a four-year course in podiatry, or an accelerated course in podiatry of not less than one hundred and forty-four weeks of academic instruction, in a school of podiatry approved by the board, and hold a doctor's degree in podiatry from a school, college or university having the power to grant such degree, he shall, upon the payment of fifty dollars, be examined by the board as provided in section seventeen, and, if found qualified, shall be registered and shall receive a certificate as a registered podiatrist, signed by the chairman and secretary of the board. An applicant failing to pass an examination satisfactory to the board shall, if not disqualified under sections eighteen and nineteen, be entitled to be reexamined from time to time upon the payment of ten dollars for each such reexamination. No such applicant shall be registered unless he obtains a general average of seventy-five per cent in the various subjects in which he is examined. Every such certificate shall expire on the last day of the year when it was granted, but upon payment of ten dollars shall be renewed by the board for each subsequent year without examination.

Upon failure to make payment of such fee on or before the last day of the year, such registration shall expire. The board, not later than five days thereafter, shall so notify him. Upon application by a podiatrist whose registration has expired within six months after the date of such notice and upon payment of ten dollars in addition to the regular fee for renewal, such registration shall be reinstated by the board.

Any person who shall present to the board a certified copy or certificate of registration or license which was issued to him after examination by a board of registration in podiatry or in medicine in any other state, where the requirements for registration are in the opinon of the board equivalent to those of this commonwealth, may be registered and given a certificate of registration in this commonwealth without a written examination; provided, that such state accords a like privilege to holders of certificates of registration issued in this commonwealth, and that the applicant has not previously failed to pass the examination required in this commonwealth, and that he has been engaged in the reputable practice of podiatry continuously for not less than five years immediately preceding his application, and that he intends to reside and practice podiatry in this commonwealth. The fee for such registration shall be one hundred dollars.

Any applicant aggrieved by the refusal of the board to approve a podiatry school under this section shall be entitled to have the reasonableness of such refusal reviewed by a justice of the superior court whose decision shall be final. Any school of podiatry within the commonwealth approved by the board may be inspected by the board subsequent to a thirty-day notice of such inspection and if, upon such inspection, it is the opinion of the board that said approved school has lowered its standards below those established by the board, the school, after notice and hearing, may be disapproved. The board shall forthwith establish standards to be met by colleges, universities or podiatry schools and when, in the opinion of the board, such standards have been met by any college, university or podiatry school, a certificate of approval shall be awarded to it; provided, that if at any time such approved college, university or podiatry school has, in the opinion of the board, lowered its standards below those established by the board, such certificate, after notice and hearing, may be revoked by the board and said commissioner.

Any college, university or podiatry school desiring to be approved for the purposes of this section may file with the board a written request for the approval of such college, university or podiatry school and thereupon a public hearing shall be seasonably granted by the board and a written decision made by it within twenty days after the termination of such hearing and the applicant for such approval shall be notified of such decision. A written decision of the board refusing to approve any college, university or podiatry school shall not become effective until thirty days after written notice of such decision is given to the college, university or podiatry school seeking such approval. Every such college, university or podiatry school aggrieved by such refusal shall have the right to file a petition in the superior court for Suffolk county to revise or reverse the decision of the board. Notice of the entry of such petition shall be given to the board and all proceedings connected therewith shall be according to rules regulating the trial of civil causes without juries. The court shall hear the case and finally determine whether or not such approval shall be granted or revised.

If such a petition is so filed within the aforesaid period of thirty days said decision of the board shall not become effective unless and until a final decree affirming said decision is entered upon the aforesaid petition.

Amended by St.1937, c. 425, § 5; St.1948, c. 557; St.1950, c. 363, § 1; St.1952, c. 585, § 22; St.1955, c. 676, § 1; St.1970, c. 443, §§ 20 to 25; St.1972, c. 684, §§ 19, 20; St.1973, c. 925, § 18.

§ 16A. Limited registration

An applicant for limited registration under this section may, upon payment of twenty-five dollars, be registered by the board as an intern, resident, fellow, extern, preceptor or podiatric medical officer for such time as it may subscribe if he furnishes the board with satisfactory proof that he is eighteen years of age or over and of good moral character, he has creditably completed two years of a prepodiatric medical course of study in a college or university and not less than three and one-half years of study or the comparable requisite years of study at a legally chartered podiatric medical school offering an accelerated course or two years in a podiatry program at a medical school chartered in the commonwealth, followed by one and one-half years at a legally chartered podiatric medical school having the power to grant a degree in podiatric medicine, and that he has been appointed a resident, fellow, intern, extern, preceptor or podiatric medical officer in a health care program. All such schools and programs must be approved by the board of registration in podiatry pursuant to section sixteen and leading toward certification by specialty boards recognized by the American Podiatry Association.

Such limited registration shall entitle said applicant to practice podiatric medicine only in the hospital, institution, clinic or program designated on his certificate of limited registration, or outside such hospital, institution, clinic or program for the treatment, under supervision of one of its medical officers who is a duly registered physician, or one of its podiatric medical officers who is a duly registered podiatric physician, of persons accepted as patients, by any hospital, institution, clinic or program affiliated for training purposes with the hospital, institution, clinic or program designated on such certificate, which affiliation is approved by the board, and in any case, under regulations established by such hospital, institution, clinic or program. The name of any hospital, institution, clinic or program so affiliated and so approved shall also be indicated on such certificate. Limited registration under this section may be revoked at any time by the board.

Added by St.1979, c. 329.

§ 16B. Students; practice of podiatric medicine

A student of podiatric medicine who has creditably completed not less than two years of study in a legally chartered medical or podiatric medical school, wherever located, may practice podiatric medicine, but only under the supervision of an instructor in a legally chartered medical, or podiatric medical school, which instructor shall be a registered physician or podiatrist in the commonwealth and a duly appointed field faculty member of a legally chartered medical or podiatric medical college to which the student may be assigned. The board may, in its discretion from time to time designate other facilities or locations in which said student may practice podiatric medicine under the conditions described above. Said student of podiatric medicine shall not prescribe or dispense narcotic drugs as defined in section one of chapter ninety-four C.

Added by St.1979, c. 329.

§ 16C. Temporary registration

Temporary registration as a qualified podiatric physician may be granted to a visiting podiatric physician holding a license to practice in another state or territory or in the District of Columbia and having a temporary faculty appointment certified by the chairman of the board of registration in podiatry for purposes of podiatric medical education, such registration to terminate automatically upon termination of the faculty appointment and, in any event, at the end of eight months: to a podiatric physician holding a license to practice in another state or territory or in the District of Columbia to permit him to act as a substitute podiatric physician for a registered podiatric physician in the commonwealth, to be granted only upon written request of said registered podiatric physician and to be limited to three months or less; and to a podiatric physician eligible for examination or registration in the commonwealth who is a diplomate of a specialty board approved by the American Podiatry Association to permit him to act as a substitute podiatric physician for a registered podiatric physician in the commonwealth, to be granted only upon written request of said podiatric physician, to be limited to the specialty to which the applicant is certified and to be limited to three months or less. The fee for such temporary registration in any case shall be fifty dollars.

Added by St.1979, c. 329.

§ 17. Examinations

Examinations shall be in English and shall be wholly or partly written, oral or clinical, as the board may determine, and shall include, and be limited to, subjects taught in recognized schools of podiatry.

Amended by St.1937, c. 425, § 6; St.1970, c. 443, § 26.

§ 17A. Records of board; rules and regulations; reports; investigation of complaints

The board shall keep a full record of its proceedings and a registry of all persons registered by it, which shall be public records and open to inspection. The board shall make such rules and regulations as may be necessary for the proper conduct of its duties. It shall make an annual report, including a statement of the condition of podiatry in the commonwealth.

The board shall investigate all complaints of the violation of any provision of sections thirteen to twenty-two, inclusive, or of section sixty-five relative to podiatry, and report the same to the proper prosecuting officers.

Added by St.1937, c. 425, § 7. Amended by St.1970, c. 443, § 27.

§ 18. Refusal to issue certificate; revocation

The board shall refuse to issue a certificate to a person, or may, after a hearing if requested by a person to whom a certificate has been issued, revoke such certificate if, in the opinion of the board, such person is intemperate in the use of alcoholic liquors or narcotic drugs, or has been guilty of misconduct involving moral turpitude, or has been convicted of an offence involving moral turpitude, or has violated any provision of sections thirteen to twenty-three, inclusive, or of section sixty-five relative to podiatry, or has been guilty of unprofessional conduct, or is in any other manner disqualified morally, mentally or physically to receive or hold such certificate, or has in his application therefor knowingly made any false statements or presented to the board a fraudulent diploma, certificate or other document.

Amended by St.1937, c. 425, § 8; St.1970, c. 443, § 28.

§ 19. Unprofessional conduct; definition; regulation by board

"Unprofessional conduct", as used in section eighteen, shall include: (*a*) the wilful betrayal of a professional secret; (*b*) lending the use of one's name to an unregistered podiatrist, or having professional connection with such a person or with anyone convicted of any offense involving moral turpitude; (*c*) the selling or giving of any substance or compound containing alcohol or narcotic drugs for other than legal purposes; (*d*) written or printed statements of a character tending to claim professional superiority or the performance of professional services in a superior manner; (*e*) the inclusion of any fraudulent, misleading or deceptive statement in any form of advertising; and (*f*) any violation of any rule or regulation under section seventeen A.

The board may, by regulation, in a manner consistent with the foregoing, further regulate advertising by persons subject to its jurisdiction.

Amended by St.1937, c. 425, § 9; St.1951, c. 105; St.1970, c. 443, § 29; St.1978, c. 508, §§ 2, 3.

§ 20. Suspension of certificate

The board, after a hearing if requested by the person registered, may suspend any certificate for not more than six months because of any misconduct on the part of the person registered which would not, in its opinion, justify the revocation thereof.

Amended by St.1937, c. 425, § 10.

§ 21. Recording of certificate of registration by city or town clerk; fee; records

Every person registered under section sixteen shall, before entering upon the practice of podiatry, submit his certificate of registration to the clerk of the city or town where he proposes to practice, and shall inform the clerk that he is the person designated therein, and shall pay him the fee provided by clause (24) of section thirty-four of chapter two hundred and sixty-two. Thereupon, the clerk shall record his name and address and the date and number of his certificate, and the said record shall be open to public inspection, and the clerk shall furnish a copy thereof to the board within one week.

Amended by St.1937, c. 425, § 11; St.1948, c. 550, § 19; St.1970, c. 443, § 30.

§ 21A. Prescriptions on hospital or clinic blanks; printing of podiatrist's name required

Every registered podiatrist who writes a prescription upon a prescription blank of a hospital or clinic shall print or type his name directly below his signature thereon.

Added by St.1973, c. 173, § 2.

§ 22. Penalties

Whoever obtains or attempts to obtain registration under section sixteen by any fraudulent means, or violates any provision of section fourteen, shall, except as provided in section sixty-five, be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not less than three months nor more than one year, or both. Whoever violates any provision of the preceding section shall be punished by a fine of not less than three nor more than twenty dollars.

REGISTRATION OF PHYSICAL THERAPISTS

§ 23A. Definitions

The following words as used in sections twenty-three A to twenty-three *O*, inclusive, unless the context otherwise requires, shall have the following meanings:—

(*a*) "Physical therapy", treatment of a person by the use of therapeutic exercise, massage, heat, cold, water, radiant energy, electricity, or sound for the purpose of correcting or alleviating any physical or mental condition or preventing the development of any physical or mental disability; or the performance of tests as an aid to the diagnosis or treatment of a person, provided, however, that physical therapy shall not include radiology or electrosurgery, or chiropractic as defined in section eighty-nine.

(*b*) "Physical therapist", a person who is duly registered as a physical therapist in accordance with section twenty-three B and who practices physical therapy upon the referral of a physician duly registered by the commonwealth.

(*c*) "Board", the board of registration and discipline in medicine established under section ten of chapter thirteen.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23B. Registration of physical therapists; applications; fees

A person who desires to be registered as a physical therapist shall apply to the board, in writing, on an application form prescribed and furnished by the board. He shall include in his application statements under oath satisfactory to the board showing that he possesses the qualifications preliminary to examination required by section twenty-three C. At the time of filing his application, an applicant for registration as a physical therapist shall pay to the board a fee of fifty dollars.

St.1958, c. 585, § 1. Amended by St.1972, c. 487, § 1; St.1975, c. 584, § 1.

§ 23C. Eligibility for registration

To be eligible for registration by the board as a physical therapist an applicant shall be of good moral character; and be an applicant for registration as a physical therapist, have graduated from an educational program within the United States leading to professional qualification in physical therapy, which program was approved at the time of his graduation by the American Physical Therapy Association or, if graduated prior to nineteen hundred and thirty-six, by the American Physical Therapy Association; or have graduated from an educational program in physical therapy chartered in a sovereign state outside the United States and have furnished to the board such evidence as it may require: (1) that his education is substantially the equivalent of that of graduates of approved programs in the United States, and (2) that he has sufficient qualifications, including proficiency in the English language, to practice physical therapy; and pass to the satisfaction of the board an examination conducted by it to determine his fitness to practice as a physical therapist.

St.1958, c. 585, § 1. Amended by St.1973, c. 925, § 19; St.1975, c. 584, § 1; St.1977, c. 87.

§ 23D. Registration of persons registered or licensed in other states, territories, etc.

The board may, in its discretion and without examination, register as a physical therapist any applicant who is a physical therapist registered or licensed under the laws of another state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. At the time of making such application, the applicant shall pay the board a fee of twenty-five dollars.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23E. Examinations; re-examinations

The board shall examine applicants for registration as physical therapists at such times and places as it may determine and shall conduct at least two such examinations in each calendar year. The examination shall embrace the following subjects:—the applied sciences of anatomy, kinesiology, physiology, pathology, psychology, physics; physical therapy, applied to medicine, neurology, orthopedics, pediatrics, psychiatry and surgery; medical ethics and technical procedures in the practice of physical therapy. The type of examination shall be determined by the board. Any applicant who fails to pass such examination may take a second examination upon the payment of an additional application fee of twenty-five dollars, and must be so reexamined at the next scheduled examination. The board shall have discretion to determine the number of times an individual applicant may take the examination. An applicant who fails to pass the second examination shall pay an application fee of fifty dollars for each additional examination taken.

St.1958, c. 585, § 1. Amended by St.1972, c. 487, § 2; St.1975, c. 584, § 1.

§ 23F. Registration; certificate

The board shall register as a physical therapist each applicant who proves to the satisfaction of the board his fitness for registration or licensure under the provisions of sections twenty-three A to twenty-three *O*, inclusive. It shall issue to each person so registered a certificate of registration which shall be prima facie evidence of the right of such person to represent himself as a registered physical therapist.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23G. Renewals; fees; lapsed registration

Every registered physical therapist shall, during January of every even-numbered year, apply to the board for a renewal of his registration and pay a fee of ten dollars. Any registration not so renewed prior to April first in any such year shall automatically lapse on said date. The board may in its discretion revive and extend a lapsed registration granted under the provisions of sections twenty-three B to twenty-three F, inclusive, upon the payment of all unpaid renewal fees.

St.1958, c. 585, § 1. Amended by St.1972, c. 684, § 21; St.1975, c. 584, § 1.

§ 23H. Graduate physical therapists; practice prior to registration; examinations

Notwithstanding the provisions of subsections (*b*) and (*c*) of section twenty-three A, an applicant for registration as a physical therapist who meets the qualifications described in section twenty-three C may, between the date of filing such application and the announcement of the results of the next succeeding examination for registration, practice as a physical therapist under the direction of a registered physical therapist. If any person so practicing as a physical therapist fails to qualify for and pass the first announced examination after filing for registration or licensure, all privileges under this section shall automatically cease upon due notice to the applicant of such failure. Such privileges shall be renewed upon filing for a second examination for registration or licensure as provided in section twenty-three E, and shall automatically cease upon due notice to the applicant that he has failed to pass the second examination.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23*I*. Grounds for refusal to register; suspension or revocation of registration

The board, after due notice and hearing, may refuse to issue a certificate of registration to a physical therapist or may suspend or revoke said certificate if such physical therapist has:

(*a*) practiced physical therapy other than upon the referral of a physician duly registered under this chapter;

(*b*) used drugs or intoxicating liquors to an extent which adversely affects his professional competence;

(*c*) been convicted of a felony or of a crime involving moral turpitude;

(*d*) obtained or attempted to obtain registration as a physical therapist by fraud or deception;

(*e*) been grossly negligent in his practice as a physical therapist;

(*f*) been adjudged mentally ill or incompetent by a court of competent jurisdiction;

(*g*) acted in a manner which is professionally unethical according to ethical standards of the profession of physical therapy.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23J. Rules and regulations; record of proceedings; roster

The board may adopt reasonable rules and regulations to carry into effect sections twenty-three A to twenty-three *O*, inclusive, and may amend and revoke such rules and regulations at its discretion. The board shall keep a record of its proceedings and a roster of all persons registered by it. This roster shall include the registrant's name, last known business and residential addresses, date of registration and registration number as physical therapist.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23K. Investigation of violations; reporting

The board shall investigate every alleged violation of sections twenty-three A to twenty-three N, inclusive, coming to its notice. If as a result of such investigation, the board has reasonable cause to believe that a violation has occurred, it shall forthwith report to appropriate law enforcement agency.

St.1958, § 1. Amended by St.1975, c. 584, § 1.

§ 23L. Improper use of words or letters

A person who does not possess a valid and existing certificate of registration as a physical therapist pursuant to the provisions of sections twenty-three A to twenty-three *O*, inclusive, shall not in any manner represent himself as a physical therapist nor use in connection with his name the words or letters "Registered Physical Therapist", "Physical Therapist", "Physiotherapist", "Physical Therapy Technician", "Doctor of Physical Therapy", "R.P.T.", "P. T.", "Ph.T.", "P.T.D.", "P.T.T.", or any other letters, words, abbreviations or insignia indicating or implying that he is a physical therapist.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23M. Violations; penalties

Any person who violates any provision of sections twenty-three A to twenty-three *O*, inclusive, or who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required under said sections, or who obtains or attempts to obtain registration by any fraudulent representation shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment, for not more than three months, or both.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23N. Referrals; prohibited medical practices

No person shall practice as a physical therapist except upon the referral of a physician or dentist duly registered by the commonwealth. Nothing in sections twenty-three A to twenty-three *O*, inclusive, shall be construed as authorizing a physical therapist to practice medicine, osteopathy, chiropractic or any other form or method of healing not specified in section twenty-three A.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23*O*. Practice of physical therapy by employees of federal agencies

Nothing contained in sections twenty-three A to twenty-three N, inclusive, shall prohibit any person employed as a physical therapist by an agency of the federal government from practicing physical therapy while discharging his official duties as such employee.

St.1958, c. 585, § 1. Amended by St.1975, c. 584, § 1.

§ 23P. Partial invalidity

If any provision of sections twenty-three A to twenty-three O, inclusive, or the application of such provision to any person or circumstance shall be held invalid, the remainder of said sections, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

St.1958, c. 585, § 1.

§ 23Q. Citation

Sections twenty-three A to twenty-three P, inclusive, shall be known and may be cited as the Registered Physical Therapists Law.

St.1958, c. 585, § 1.

REGISTRATION OF PHARMACISTS

§ 24. Registration of pharmacists; examination; fees

A person who desires to do business as a pharmacist shall, upon payment of twenty-five dollars to the board of registration in pharmacy, herein and in sections twenty-five to forty-two, inclusive, called the board, be entitled to examination; provided, that he shall have been graduated from a school or college of pharmacy approved by the board. If any such person is found qualified on examination, he shall be registered as a pharmacist, and shall receive a certificate signed by the president and secretary of the board. Any person failing to pass such examination, shall upon request be re-examined, after the expiration of three months, at any regular meeting of the board, upon payment of twenty-five dollars. The board may grant certificates of registration as assistants after examination upon the terms above named, and such certificates shall entitle the holder thereof to all the privileges of a registered pharmacist during the temporary absence of the latter, which absence shall be not more than six hours in any one period of twenty-four consecutive hours; provided, that, upon application to the board, such an assistant may be permitted to exercise the privileges of a registered pharmacist for such further period as the board shall determine. No such certificate as assistant shall allow the holder thereof to engage in the drug business on his own account or as a manager to conduct a pharmacy or drug store. The board may grant certificates of registration to such persons as shall furnish with their applications satisfactory proof that they have been registered by examination in some other state; provided, that such other state shall require a degree of competency equal to that required of applicants in this commonwealth. Every such applicant for registration as a registered pharmacist shall pay to the secretary of the board fifty dollars at the time of filing his application. No such certificate shall be granted until the person applying therefor shall have signified his intention of acting under the same in this commonwealth.

Amended by St.1932, c. 227; St.1933, c. 126; St.1937, c. 343, § 1; St.1941, c. 52, § 1; St.1945, c. 502, § 1; St.1952, c. 585, § 23; St.1957, c. 463; St. 1972, c. 684, § 22; St.1979, c. 57.

§ 24A. Records; expiration of registrations; renewals; reinstatement; fees

The board shall keep an official record of the names of all registered pharmacists and registered assistant pharmacists. All registrations of registered pharmacists and registered assistant pharmacists shall expire on December thirty-first of each even-numbered year. Any holder of a certificate of registration as a pharmacist or assistant pharmacist issued under section twenty-four and remaining uncancelled shall be entitled to have such certificate biennially renewed by registration by the board, upon the payment of a biennial renewal fee of ten dollars. On the first day of November of each even-numbered year the board shall send written notice to this effect to every registered pharmacist and every registered assistant pharmacist, and shall enclose with each notice a proper blank for such registration. If said blank properly filled out, together with said fee of five dollars, shall not on or before the thirty-first day of December of such even-numbered year be received by said board from any pharmacist or assistant pharmacist so notified, said board shall strike from the register the name of such pharmacist or assistant pharmacist; provided, that at any time thereafter, any pharmacist or assistant pharmacist whose name shall have been so removed from the register may, upon submission to the board of proof satisfactory to it of his moral and physical fitness, have his name restored by it upon the payment to it of all accrued biennial renewal fees, together with a reinstatement fee of five dollars.

Added by St.1945, c. 502, § 3. Amended by St.1955, c. 429; St.1956, c. 575; St.1972, c. 684, § 23.

§ 24B. Standards for schools of pharmacy; certificates of approval; courses

The board and the commissioner of education shall forthwith establish standards to be met by schools or colleges of pharmacy and when, in the opinion of the board and the commissioner, such standards have been met by any school or college of pharmacy, a certificate of approval shall be awarded to such approved school or college of pharmacy; provided, that if at any time such approved school or college of pharmacy has, in the opinion of the board and said commissioner, lowered its standards below that established by the board and said commissioner, such certificate, after notice and hearing, may be revoked by the board and said commissioner. No person, school or college of pharmacy or other institution of learning shall establish, conduct or offer any course in pharmacy for residents or non-residents of the commonwealth unless and until such course meets the standards established by the board and said commissioner under authority of this section. Whoever violates any provision of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment for not more than one year, or both.

Added by St.1946, c. 194. Amended by St.1947, c. 503.

§ 25. Records; annual reports

The board shall keep a record of the names of all persons examined and registered by it, of all persons to whom permits are issued under section thirty-nine, and of all money received and disbursed by it, and a duplicate thereof shall be open to public inspection in the office of the state secretary. The board shall make an annual report of the condition of pharmacy in the commonwealth.

§ 26. Display of certificate

Every person receiving a certificate of registration from the board shall conspicuously display the same in his place of business.

§ 27. Complaint; notice; hearing

The board shall hear all complaints made to it against any person registered as a pharmacist charging him in his business as a pharmacist with violating any of the rules or regulations of the board or any laws of the commonwealth, and especially the laws relating to the sale of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, and alcohol; or with engaging with, or aiding or abetting another in the violation of said rules, regulations or laws; or, if he himself is not the owner and actively engaged in such business, with suffering or permitting the use of his name or certificate of registration by others in the conduct of the business of pharmacy. Such complaints shall set out the offence alleged, and be made within six months after the date of the act complained of or within six months after a conviction by a court of competent jurisdiction. The board shall notify the person complained against of the charge against him and of the time and place of the hearing at which he may appear with his witnesses and be heard by counsel. It may summon witnesses and compel their attendance at said hearings. Witnesses shall testify on oath and may be sworn by a member of the board. Three members of the board shall be a quorum for any such hearing.

Amended by St.1934, c. 328, § 2; St.1937, c. 343, § 2; St.1960, c. 634, § 1; St.1976, c. 444.

§ 28. Decision of board of registration in pharmacy; effect

If the full board sitting at such hearing finds the person guilty, the board may suspend the effect of his certificate of registration as a pharmacist for such term as it fixes. The board may at any time reconsider its action in cases where it has suspended or revoked the license or certificate of registration of a pharmacist, and may change its determination as justice shall require.

§ 29. Suspension of certificate of registration

It may, by a majority vote of all its members, after hearing, suspend the certificate of registration of a registered pharmacist, who, in its judgment, is a menace to the public by reason of the improper use of intoxicating liquor or drugs.

§ 30. Unlawful dispensing of controlled substances; penalties; clerical and ministerial supportive services excepted

No person shall dispense any controlled substance or any substance intended for hypodermic use except a person registered as a pharmacist or assistant pharmacist under section twenty-four or corresponding provisions of earlier laws who is acting in the course of his employment in a pharmacy, an intern in pharmacy under the direct supervision of a registered pharmacist in accordance with the regulations of the board, and a practitioner in accordance with the provisions of chapter ninety-four C. The terms "controlled substances", "dispense", "practitioner", and "pharmacy", as used in this section, shall have the same meaning as set forth in section one of said chapter ninety-four C.

Whoever violates any provision of this section shall be punished by imprisonment in a jail or the house of correction for not more than three months, or by a fine of not more than five hundred dollars, or both.

Notwithstanding any provision of this section to the contrary, a person under the direction and supervision of a registered pharmacist may perform those clerical and ministerial supportive services in a pharmacy which do not require the exercise of professional judgment by a registered pharmacist. The board may make such rules and regulations as it deems necessary to define the supportive services which an unregistered person may perform in a pharmacy.

The registered pharmacist shall be responsible for the act of any supportive personnel under his supervision.

Amended by St.1937, c. 343, § 3; St.1974, c. 326, § 1.

§ 31. Marking of signs advertising place of business and labels for medicinal preparations

Every registered pharmacist carrying on the drug business as proprietor or manager shall cause his name to appear on every sign indicating or advertising his place of business and on every label used for medicinal preparations compounded in his place of business.

§ 32. Investigation of complaints

The board shall investigate all complaints of the violation of any provision of sections twenty-four to forty-two, inclusive, or of section sixty-five, so far as it relates to pharmacy, and report the same to the proper prosecuting officers, and especially investigate and cause to be prosecuted all violations of sections twenty-nine to thirty G, inclusive, of chapter one hundred and thirty-eight.

Amended by St.1934, c. 328, § 3.

§ 33. Access to documents

A registered pharmacist against whom a complaint or charge is pending before the board, or his counsel, shall have the same right of access to documents in the possession of said board as a person charged with crime in the courts of the commonwealth would have to documents in the possession of the clerk of the court or the prosecuting officer.

§ 34. Certificate of conviction of pharmacist; notification of board

The court or magistrate before whom a person is convicted of a violation of section thirty of this chapter, or of any provision of sections twenty-nine to thirty F, inclusive, of chapter one hundred and thirty-eight relating to the retention, filing or inspection of prescriptions, or of section two of chapter two hundred and seventy shall send to the board a certificate under seal showing the time, cause and place of conviction.

Amended by St.1934, c. 328, § 4.

§ 35. Repealed by St.1974, c. 326, § 2

§ 36. Continuance of business of deceased or incapacitated registered pharmacists

The widow, executor or administrator of a registered pharmacist who has died or the wife of one who has become incapacitated may continue his business under a registered pharmacist, who may also be considered qualified to receive a certificate of fitness under section thirty of chapter one hundred and thirty-eight authorizing him to exercise upon the premises of said deceased or incapacitated pharmacist the rights conferred by section twenty-nine of said chapter upon holders of said certificates; provided, that the registered pharmacist under whom the business is continued is in charge of the premises and present therein.

Amended by St.1934, c. 328, § 6.

LICENSING OF PERSONS ENGAGED IN THE SALE, DISTRIBUTION OR DELIVERY, AT WHOLESALE, OF DRUGS OR MEDICINES

§ 36A. Licensing of sale, distribution and delivery of drugs or medicines

Except as otherwise provided in section thirty-five, no person shall engage in the sale, distribution or delivery, at wholesale, of drugs or medicines within the commonwealth without a license so to do.

Added by St.1948, c. 539, § 2.

§ 36B. Licenses; fees; renewals

The board shall upon application and the payment of an annual license fee of one hundred dollars issue licenses required by section thirty-six A; provided, that no such license shall be issued to any applicant unless the board is satisfied that he or it is actually engaged in and is carrying on such wholesale business. Such license shall be renewed on or before December first of each year upon the payment of a license fee of one hundred dollars. Any person who is engaged in the wholesale drug business at more than one location, shall obtain such a license for each location.

Added by St.1948, c. 539, § 2. Amended by St.1963, c. 450, § 1; St.1972, c. 684, § 24.

§ 36C. Use of words "wholesale druggist"; inspection and investigation of wholesale dealers; reports of violations; complaints

No person shall use the words "wholesale druggist" or any other words of similar import, holding himself or itself out to be engaged in the sale, distribution or delivery of drugs or medicines, at wholesale, without first having been licensed as provided in sections thirty-six A and thirty-six B. The agents of the board shall have authority, during business hours, to inspect and investigate all wholesale dealers in drugs or medicines, and shall report all violations of sections thirty-six A to thirty-six D, inclusive, to the board, upon the direction of which such agents shall apply for criminal complaints against persons guilty of any such violations.

Added by St.1948, c. 539, § 2.

§ 36D. Penalties

Whoever, not being licensed as provided in sections thirty-six A and thirty-six B, engages in the sale, distribution or delivery, at wholesale, of drugs or medicines, or uses the words "wholesale druggist" or any other words of similar import in connection with his business to indicate the sale, distribution or delivery of such commodities, at wholesale, or whoever sells, distributes or delivers such commodities at retail, and holds himself out to be a wholesale druggist by using the words, "wholesale druggist" or words of similar import in connection with his business, or in advertising the same, shall be punished by a fine of not more than one thousand dollars or by imprisonment in a jail or house of correction for not less than thirty days nor more than one year, or both.

Added by St.1948, c. 539, § 2.

REGISTERING AND LICENSING STORES FOR TRANSACTING RETAIL DRUG BUSINESS

§ 37. Drug business; definition

"Drug business", as used in the two following sections, shall mean the sale, or the keeping or exposing for sale of drugs, medicines, chemicals or poisons, except as otherwise provided in section thirty-five, also the sale or the keeping or exposing for sale of opium, morphine, heroin, codeine or other narcotics, or any salt or compound thereof, or any preparation containing the same, or cocaine, alpha or beta eucaine, or any synthetic substitute therefor, or any salt or compound thereof, or any preparation containing the same, and the said term shall also mean the compounding and dispensing of physicians' prescriptions.

§ 38. Transaction of retail drug business; registration; permit; display of permit

No store shall be kept open for the transaction of the retail drug business, or be advertised or represented as transacting such business, by means of any sign or advertisement containing the words "drug store", "pharmacy", "apothecary", "drug", "drugs", "medicine shop", or any combination of such words, or otherwise, unless it is registered with, and a permit therefor has been issued by, the board, as provided in the following section; provided, that said words, or any of them, may, with the written permission of the board, be used with respect to a store not registered with, and not having a permit issued by, the board as aforesaid, if in the town, or voting precinct thereof, where such store is located there is no store so registered and having such a permit. The permit shall be displayed in a conspicuous place in the store for which it is issued. The word "town", as used in this section, shall not include city.

Amended by St.1934, c. 236.

§ 39. Registration; permits; fees; rendering of final decision

The board may, upon application made in such manner and form as it shall determine, register a store for the transaction of the retail drug business, which store shall be independent of and separate from any business or store other than a retail drug store and issue to such person as it deems qualified to conduct such store, a permit to keep it open; provided, however, that the board may deny such registration and refuse to issue such permit if, in its discretion, such store would be inconsistent with or opposed to the best interests of the public health, welfare or safety, but no such registration shall be made or permit issued in the case of a corporation unless it shall appear to the satisfaction of the board that the management of such drug store or pharmacy is in the hands of a registered pharmacist. Such permit shall expire on December thirty-first of each uneven numbered year following the date of its issue, and the fee therefor shall be thirty-five dollars for two years, or any part thereof.

The board shall, within one hundred and fifty days after the filing of an application render a final decision denying or allowing registration. Failure to render such decision, except when such failure to act is caused by the delay of the applicant, shall constitute an approval of the application and a permit shall be issued.

Amended by St.1939, c. 138; St.1951, c. 410; St.1953, c. 281; St.1962, c. 695; St.1963, c. 488, § 1; St.1972, c. 684, § 25; St.1977, c. 653.

§ 40. Suspension or revocation of registration and permit; notice; hearing

The board may suspend or revoke any registration made under the preceding section and any permit issued thereunder for any violation of the law pertaining to the drug business or the sale of alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, or for any violation of the rules and regulations established by the board, or for aiding or abetting in a violation of any such law, rules or regulations; but before such suspension or revocation the board shall give a hearing to the holder of the permit, after due notice to him of the charges against him and of the time and place of the hearing. Such holder may appear at the hearing with witnesses and be heard by counsel. Witnesses shall testify on oath and any member of the board may administer oaths to them. The board may require the attendance of persons and compel the production of books and documents. Three members of the board shall be a quorum for such a hearing, but no registration or permit shall be suspended or revoked unless upon the affirmative vote of three or more members thereof.

Amended by St.1934, c. 328, § 6A; St.1937, c. 343, § 5.

§ 41. Penalty

Whoever violates any provision of section thirty-eight shall be punished by a fine of not less than five nor more than one hundred dollars or by imprisonment for not more than one month, or both.

§ 41A. Patent and proprietary medicines; non-controlled substances; exemption from regulation

Sections thirty-six A to forty-one, inclusive, of this chapter, and sections twenty-nine to thirty G, inclusive, of chapter one hundred and thirty-eight shall not apply to the manufacture or sale of patent and proprietary medicines or any substance or drug not included or defined in chapter ninety-four C as a controlled substance.

Added by St.1975, c. 679.

§ 42. Authorization of expenditures

For the purpose of carrying out the five preceding sections, the board may expend annually a sum not exceeding one thousand dollars.

§ 42A. Rules and regulations; suspension or revocation of license or permit; hearing

The board may make such rules and regulations as it deems necessary to enable it to properly enforce the provisions of law relating to the retail drug business and pharmacy, and regarding any other matter within its jurisdiction; provided, that nothing herein shall authorize the board to make a rule or regulation requiring, as a prerequisite to the examination of an applicant under section twenty-four, or to his qualification, that he be the holder of a degree, nor a rule or regulation prohibiting a registered pharmacist connected with and employed by a hospital or clinic from dispensing medicines or drugs to an employee of such hospital or clinic for the use of such employee, his spouse and his children living in the same household with such employee.

The board may by rule or regulation adopt, amend or repeal rules of professional conduct. Every person who holds a certificate, license, registration or permit to practice pharmacy or engage in the retail drug business in this commonwealth shall be governed and controlled by the rules and regulations of professional conduct adopted by the board. The board may suspend or revoke any certificate, license, registration or permit to practice pharmacy or engage in the retail drug business for any violation of the rules and regulations established hereunder or for aiding or abetting in any violation of such rules or regulations; but before such suspension or revocation, the board shall give a hearing to the holder of the certificate, license, registration or permit, after due notice to him of the charges against him and of the time and place of the hearing. Such holder may appear at the hearing with witnesses and be heard by counsel. Witnesses shall testify on oath and any member of the board may administer oaths to them. The board may require the attendance of persons and compel the production of books and documents. Three members of the board shall be a quorum for such a hearing, but no certificate, license, registration or permit shall be suspended or revoked unless upon the affirmative vote of three or more members thereof. The rules of professional conduct adopted by the board shall be printed as part of the application blank for permits, licenses, certificates and registration and for renewals thereof, and every applicant shall subscribe thereto when making an application.

Added by St.1937, c. 343, § 6. Amended by St.1960, c. 634, § 2; St.1970, c. 584.

REGISTRATION OF DENTISTS

§ 43. Powers and duties of board of registration of dentistry; records; annual reports

The board of registration of dentistry, herein and in sections forty-three A to fifty-three, inclusive, called the board, shall examine applicants for registration in dentistry, and shall investigate all complaints of violations of sections forty-four, forty-nine, fifty-two, fifty-two A, fifty-two C and sixty-five. In aid thereof, the board may make, and shall publish, such rules and regulations as it deems necessary. If, as a result of such investigation, the board has reasonable cause to believe that a violation has occurred, it shall forthwith file a written report of the same with the attorney general who shall, within three months following receipt of such report, notify the board in writing of the action taken with respect to such violation. The board may also bring a petition in equity in the superior court to enjoin the continuation of such violation. Four members of the board shall constitute a quorum for the transaction of business. The board shall keep a full record of its proceedings and a registry of all persons registered by it, which shall be public records open to inspection. A transcript of any of the entries in such record, certified by its secretary, shall be competent evidence of the facts stated therein. The board shall make a full and accurate annual report.

The board shall employ a full-time assistant secretary and it may employ such investigators and other clerical assistance as it deems necessary, all such positions to be subject to the provisions of chapter thirty-one.

Amended by St.1965, c. 583, § 1; St.1977, c. 757, § 1A.

§ 43A. Definitions

The following words shall have the following meanings wherever used in this chapter or in any rules and regulations promulgated by the board in accordance with the provisions of chapter thirty A.

"direct supervision", a dentist shall be physically present in a dental facility.

"general supervision", supervision of dental procedures based on instructions given by a licensed dentist but not requiring the physical presence of a supervising dentist during the performance of those procedures.

"delegated procedures", those procedures performed under the direct supervision or the general supervision of a licensed dentist.

"aid or assist the dentist", working simultaneously in conjoined manipulation with a dentist who is rendering treatment, as opposed to the performance of "delegated procedures" which does not require the immediate presence of a dentist.

"placement of a restoration", a procedure for the reconstruction of a tooth, or portion of a tooth, to its anatomical and functional integrity or the replacement of a tooth or teeth using those materials designed for the purpose which are accepted by the American Dental Association Council on Dental Materials and Devices.

"dental assistant", a person qualified by education, training or experience and working under the supervision of a licensed dentist, whose purpose is to aid or assist a dentist in the delivery of patient care, or perform such delegated procedures as may be authorized by rules and regulations of the board.

"dental hygienists", a person registered and licensed by the board, pursuant to the provisions of section fifty-one.

"appropriate supervision", the type of supervision, whether direct or general, which the board specifies by rules and regulations as necessary for the performance of various procedures delegated by the board to dental hygienists or dental assistants.

"full time faculty member", a dentist who devotes at least four full working days per week in teaching-patient care, research or administrative duties in the dental educational or research institution where he is employed.

"intramural group dental practice", a dental practice comprised of full time faculty members under the auspices of the dental educational or research institution where they are employed.

Added by St.1977, c. 757, § 2.

§ 44. Notification of board of office address; fees; lists; display of name

Every registered dentist when he begins practice, either by himself or associated with or in the employ of another, shall forthwith notify the board of his office address or addresses, and every registered dentist practicing as aforesaid shall biennially, before April first, pay to the board a license fee of thirty dollars, in default of which the board may revoke his license to practice dentistry after a hearing as provided by section sixty-one; but the payment of said fee at or before the time of hearing, with the additional sum of twenty dollars, shall remove the default. Every registered dentist shall also promptly notify the board of any change in his office address or addresses and shall furnish such other information as the board may require. The board shall publish annually complete lists of the names and office addresses of all dentists registered and practicing in the commonwealth, arranged alphabetically by name and also by the towns where their offices are situated. Every registered dentist shall exhibit his full name in plain readable letters in each office or room where his business is transacted.

Amended by St.1965, c. 583, § 2; St.1972, c. 684, § 26; St.1977, c. 757, § 3.

§ 45. Registration of dentists; applications; examinations and re-examinations; fees; certificate; alien applicants

Applications for registration hereunder shall be in writing upon blanks furnished by the board, which shall be signed and sworn to by the applicant, presenting proof of the requirements herein specified. Any such applicant eighteen years of age or over and of good moral character who shall furnish the board with satisfactory proof that he has received a diploma from the faculty of a dental college accredited or recognized as accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association as defined in section forty-six, shall, upon payment of seventy-five dollars, be entitled to be examined by the board. An applicant failing in his examination shall be entitled to two re-examinations within three years, for which he shall pay twenty-five dollars for each one taken. Thereafter, upon filing a new application for registration and paying a fee of forty dollars, he shall be entitled to like re-examinations. If found competent, the applicant shall be registered by the board and shall receive a certificate of registration signed by the members of the board or a majority of them, which shall be prima facie evidence of the right of the holder to practice dentistry. In proof of this right the certificate or a duplicate shall be kept in his office in plain view of his patients, and, on application, shall be shown to any member or agent of the board.

The board shall examine an applicant who is an alien only if he presents to it a certificate from the court in which he shall have filed his declaration of intention to become a citizen of the United States, or from the Immigration and Naturalization Service of the United States, showing that he has declared his intention to become such a citizen, or a copy of such declaration of intention, certified by the clerk of such court. In case the applicant is subsequently registered, unless he shall present to the board, within five years following the filing of the certificate or certified copy hereinbefore referred to, his completed naturalization papers showing that he is a citizen of the United States his certificate of registration shall be revoked and his registration cancelled. The foregoing provisions of this paragraph shall not apply to limited registration under section forty-five A.

Amended by St.1932, c. 180, § 18; St.1939, c. 415, § 2; St.1949, c. 564, § 1; St.1972, c. 684, § 27; St.1973, c. 925, § 20; St.1977, c. 757, § 4.

§ 45A. Limited registration; renewal; revocation

An applicant for limited registration under this section who is eighteen years of age or over and of good moral character who shall furnish the board with satisfactory proof that he has received a diploma from the faculty of a reputable dental college as defined in section forty-six and who shall furnish the board with satisfactory proof that he has been employed as a member of the faculty of a dental college accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association or that he has been appointed a dental intern in a hospital or other institution maintained by the commonwealth or by a county or municipality thereof, or in a hospital or dental infirmary incorporated under the laws of the commonwealth, may upon payment of twenty-five dollars be registered by the board as a limited registrant for one year; provided, however, that practice under any such original or renewal limited registration so issued by the board shall be limited to no longer than five years unless said applicant passes a clinical examination administered by the board or is a full time faculty member. Such limited registration shall entitle said applicant to practice dentistry only in the hospital or other institution designated on his registration and under the direction of a registered dentist employed therein. Limited registration under this section may be revoked at any time by the board and a holder of such a limited registration shall not practice dentistry in a private dental office or private dental clinic; provided, however, that a full time faculty member may participate in, and only in, an intramural group dental practice which is operated, managed and physically located within a nonprofit dental educational or research institution and their affiliated hospitals in which the full time faculty member is employed.

Amended by St.1949, c. 564, § 2; St.1965, c. 583, § 3; St.1977, c. 757, § 5.

§ 46. Reputable dental college; definition

A dental college shall be considered reputable which possesses the following qualifications:

First, It shall be incorporated and authorized by its charter to confer degrees of doctor of dental medicine, doctor of dental surgery or doctor of dental science.

Second, It shall have a competent faculty and corps of instructors. The teaching staff shall deliver a comprehensive and satisfactory course of lectures supplemented by adequate clinical and laboratory exercises in all subjects pertaining to modern dentistry.

Third, It shall give a course of not less than four separate academic years to matriculants who are graduates of accredited high schools or who present proof of equivalent training, or a course of not less than three separate academic years to matriculants who present satisfactory proof of having successfully completed two years of appropriate pre-dental training in a college or university authorized to grant degrees. Each academic year shall consist of not less than thirty-two weeks.

The administrative policy of the dental college shall be such as to accomplish the requirements of this section.

Amended by St.1934, c. 108.

§ 46A. Reexamination for competency

If any applicant for registration, either by examination or under the provisions of section forty-eight, is registered and issued a certificate of registration by the board, and does not practice dentistry in the commonwealth within five years from the date of the certificate of registration, or does not maintain a current license to practice dentistry in the commonwealth for a period of five consecutive years, may be required by the board to be reexamined for competency.

Added by St.1977, c. 757, § 6.

§ 47. Examination

The examination may be written or oral or both, at the option of the board, and may include the principal subjects taught in reputable dental colleges. Demonstrations in operative and prosthetic dentistry, diagnosis and prognosis may be required.

Amended by St.1965, c. 583, § 4.

§ 48. Reciprocity certificate; fee

The board may, without examination upon payment of a fee of seventy-five dollars, register, and issue a certificate to, a dentist who has been lawfully in practice for at least five years in another state, if he presents to the board a certificate of registration, and duration of practice, from the board of dental examiners or other like board of said state; provided, that such other state shall require a degree of competency equal to that required of applicants in this commonwealth. Subject hereto, the board may waive written examination with respect to a dentist who has received a certificate of qualification from the National Board of Dental Examiners.

Amended by St.1965, c. 583, § 5.

§ 49. Operation of dental office under name of owner; exception

No corporation hereinafter formed or organized shall conduct a dental office and no person shall conduct a dental office under any name other than that of the dentist actually owning the practice. The provisions of this section shall not apply to a professional corporation organized to practice dentistry under chapter one hundred and fifty-six A.

Amended by St.1948, c. 270; St.1963, c. 654, § 3.

§ 50. Practicing dentistry; definition

A person shall be deemed to be practicing dentistry if he holds himself out as being able to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the human teeth, alveolar process, gums or jaws, and associated parts, intraorally or extraorally, or if he either offers or undertakes by any method to diagnose, treat, operate or prescribe for any disease, pain, injury, deficiency, deformity or other condition of the same; or if he, except on the written prescription of a registered dentist and by the use of impressions made by a registered dentist, directly or indirectly by mail, carrier, personal agent, or by any other method, supplies, constructs, reproduces, relines, repairs, adds or directs the application of any substance, of a durable nature, to dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth or solicits or advertises, except as permitted in section fifty-two A, to supply, construct, reproduce, repair, reline, add or direct the application of any substance, of a durable nature, to dentures, bridges, appliances or other structures to be used and worn as substitutes for natural teeth; or if he places such substitutes in the mouth or adjusts the same.

Amended by St.1935, c. 344; St.1949, c. 333; St.1954, c. 408, § 1.

§ 50A. Prescriptions on hospital or clinic blanks; printing of dentist's name required

Every registered dentist who writes a prescription upon a prescription blank of a hospital or clinic shall print or type his name directly below his signature thereon.

Added by St.1973, c. 173, § 3.

§ 51. Dental hygienists; qualifications; examination and re-examination; registration; duties; research; rules and regulations; fees; default

Any person of good moral character, nineteen years old or over, who is a graduate of a school for dental hygienists accredited or recognized as accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association requiring a course of not less than one academic year and approved by the board, or who is a full time dental student who has satisfactorily completed at least four full semesters in an accredited dental college but who has not graduated from any dental college, may, upon the payment of twenty dollars, be examined by the board in subjects considered essential by it for a dental hygienist, and, if his examination is satisfactory, shall be registered as a dental hygienist and be given a certificate allowing him to practice dental hygiene.

A dental hygienist may perform all acts which may be performed by a dental assistant and may under the appropriate supervision of a dentist perform acts or services on teeth and related structures that are educational, therapeutic, prophylactic and preventive in nature, but may not perform acts or services which require the knowledge and skill of a dentist such as diagnosis, treatment planning, surgical or cutting procedures on hard or soft tissue, and the prescription of medications; provided, however, that the term "therapeutic", as used in this section, shall include gingival curettage and rootplaning in accordance with rules and regulations adopted by the board.

Nothing in sections forty-three to fifty-three, inclusive, or rules and regulations adopted thereunder shall prohibit research, including educational research, conducted under the direct supervision of a licensed dentist and done by nonprofit dental research institutions chartered by the commonwealth and by dental schools accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association, whether such research is performed within or without such institutions; provided, however, if such research involves treatment of dental patients and is to be conducted in the private office of one or more private practices, the board shall be notified in writing of the intent to conduct such research and the practice or practices shall be selected in consultation with the board.

The board may adopt rules and regulations in the public interest defining those acts and services performed by a dental hygienist and those delegated procedures performed by a dental assistant. If any educational institution in the commonwealth, which is accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association, wishes to undertake an educational program for dental hygienists or dental assistants which program would involve delegated procedures not in accordance with existing rules and regulations of the board, such educational institution must petition the board in writing, detailing the contemplated program for the board's written approval. The program may be undertaken if the board so approves and shall be subject to periodic review and approval by the board.

An applicant failing to pass a satisfactory examination shall be entitled to reexamination at any meeting of the board upon payment of a fee of twenty-five dollars.

Each dental hygienist shall register biennially and in the year not so designated for the registration of dentists and shall pay a biennial registration fee of twelve dollars, in default of which the board may revoke said registration as a hygienist, after a hearing as provided for by section sixty-one; but payment of said fee at once or before the time of hearing, with the additional sum of ten dollars, shall remove the default.

Amended by St.1949, c. 576; St.1965, c. 583, §§ 6, 7; St.1971, c. 620; St. 1972, c. 684, § 28; St.1977, c. 757, §§ 7 to 8.

§ 51A. Continuing education; rules and regulations

The board shall adopt rules and regulations for a system of continuing education, compliance with which shall be a requirement and condition precedent to the renewal of licenses issued by the board.

Added by St.1977, c. 757, § 9.

§ 52. Penalties

Any person who falsely asserts that he has a certificate granted by the board, or who, having such certificate or a duplicate thereof, fails to exhibit the same as required by section forty-five, or who falsely and with intent to deceive claims to be a graduate of any college granting degrees in dentistry, or who, except as permitted by section fifty-three, directly or indirectly practices or attempts to practice dentistry or dental hygiene without being registered under sections forty-five to fifty-one, inclusive, or corresponding provisions of earlier laws, or any registered dentist or incorporated dental company who employs or permits a person to practice dentistry unless such person is registered and exhibits his name and certificate as provided in sections forty-four and forty-five, or any person who violates any provision of sections forty-three to fifty-three, inclusive, for which no other penalty is provided, shall, except as provided in section sixty-five, be punished for the first offence by a fine of not less than one thousand dollars or by imprisonment for six months, or both; and for a subsequent offence by a fine of not less than two thousand dollars or by imprisonment for one year, or both; and any registered dentist who fails to exhibit his full name, as required by section forty-four, shall be punished by a fine of not more than fifty dollars; provided, that any corporation violating any provision of sections forty-three to fifty-three, inclusive, shall be punished by the fine herein provided for such violation, and its officers, owners or managers concerned in the violation shall be punished by the fine or imprisonment herein provided for such violation, or both.

Amended by St.1948, c. 123; St.1952, c. 117; St.1977, c. 757, § 10.

§ 52A. Illegal advertising

No registered dentist, person practicing dentistry, or dental hygienist shall include, or permit, or cause to be included, in any newspaper, radio, or television advertisement, or in any display sign, personal solicitation or other manner of advertising, any written or spoken words or statements of a character tending to deceive or mislead the public, or claiming professional superiority or the performance of professional services in a superior manner, or the performance of painless operations of a dental or oral surgical nature, or shall advertise with signs or printed advertisements, or by means of show cases, containing the representation of a tooth, teeth, dental restoration of any kind or of whatsoever design or description or any portion of the human head or neck or photograph of any person, or shall make or set forth any promises, guarantees, representations or statements that satisfaction or a cure will result from the performance of professional services; provided, however, that the foregoing shall not be construed to prevent the publication of truthful advertisements concerning the availability and price of routine dental services by persons subject to this section. Nothing in the provisions of this section shall be construed to apply to or prohibit, restrict or limit the operations of the business of a dental laboratory. The board may, by regulation, in a manner consistent with the foregoing, further regulate advertising by persons subject to this section.

Added by St.1934, c. 281. Amended by St.1937, c. 253; St.1954, c. 408, § 2; St.1965, c. 583, § 8; St.1977, c. 757, § 11; St.1978, c. 508, § 4.

§ 52B. Conviction for illegal advertising; revocation or suspension of registration

The clerk of a court in which a registered dentist or dental hygienist is convicted under the preceding section shall forthwith certify such conviction to the board, and the board may, after a hearing, revoke or suspend the registration of the convicted registrant. The board may also revoke or suspend the registration of a dentist or dental hygienist for conviction in any court of the commonwealth of a crime involving moral turpitude.

Added by St.1934, c. 281.

§ 52C. Illegal advertisement by persons engaged in dental business relating to dentures and bridges

No person engaged in the business of supplying, constructing, reproducing, relining, repairing, adding or directing the application of any substance of a permanent nature to dentures, bridges, appliances or other structures to be worn as substitutes for natural teeth shall advertise his services, technique or materials to the general public by means of advertisements in public newspapers, magazines or by radio or television display advertisements excepting, advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and in the public telephone directories; nor shall any person so engaged in any way directly solicit the patronage of the general public for any dental services, dental materials or dental appliances.

Added by St.1954, c. 408, § 3.

§ 52D. Suspension, revocation or cancellation of certificate, registration, license or authority

The board, after due notice and hearing, may suspend, revoke or cancel any certificate, registration, license or authority issued by it, of any dentist convicted in any court in the commonwealth of a felony related to the practice of dentistry.

Added by St.1977, c. 757, § 12.

§ 53. Application of sections 43 to 52; treatment by registered physician or registered dentist from another state

Nothing in sections forty-three to fifty-two, inclusive, shall apply to treatment by a registered physician not practicing dentistry, in cases where he deems treatment necessary for the relief of his patients, or prevent a registered dentist of another state or his assistant from operating at a public clinic under the auspices of a duly organized and reputable dental college or association, or prevent a student of a reputable dental college, incorporated under the laws of this commonwealth and granting degrees in dentistry, from performing operations as part of the regular college course, or prevent the widow, executor or administrator of a registered dentist who has died, or the spouse of one who is incapacitated, from continuing for not more than three years his business under a registered dentist, or prevent a dental interne registered as provided in section forty-five A from engaging in the practice of dentistry as authorized by said section. A registered dentist shall have the same right to prescribe or buy drugs or medicines for use in the conduct of his practice, as a registered physician of the commonwealth.

Amended by St.1949, c. 564, § 3; St.1977, c. 757, § 13.

REGISTRATION OF VETERINARIANS

§ 54. Board; power to make by-laws and rules; quorum

The board of registration in veterinary medicine, in sections fifty-five to sixty, inclusive, called the board, may make by-laws and rules consistent with law necessary to carry out the provisions of said sections. Three members of the board shall constitute a quorum for the transaction of business; provided, however, that at any meeting concerning the revocation of a license a quorum shall be four.

Amended by St.1958, c. 533, § 3; St.1969, c. 104; St.1974, c. 810, § 4; St.1975, c. 451, § 1.

§ 54A. Definitions applicable to sections 54 to 60

In sections fifty-four to sixty, inclusive, the following words shall have the following meanings:

"Animal", any animal other than man including wild or domestic fowl, birds, fish or reptiles, living or dead.

"Approved veterinary school", any veterinary college or division of a university or college that offers the degree of doctor of veterinary medicine or its equivalent and which conforms to the standards required for accreditation by the American Veterinary Medical Association, the board of veterinary medicine of the commonwealth, or the approving authority.

"Approving authority", (*a*) Two members from the board of registration in veterinary medicine; (*b*) One veterinary officer from the division of animal health; and (*c*) One member representing the Massachusetss Veterinary Association.

"Board", the board of registration in veterinary medicine of the commonwealth.

"Veterinarian", a person who has received a doctors' degree in veterinary medicine from a school of veterinary medicine.

"Veterinary medicine", means and includes veterinary surgery, obstetrics, dentistry, and all other branches of specialties of veterinary medicine.

Added by St.1974, c. 810, § 5. Amended by St.1975, c. 451, § 2; St.1975, c. 706, § 188.

§ 55. Registration of veterinarians; examinations; certificate; fees; renewal of licenses; revocation

Applications for registration as veterinarians, signed and sworn to by the applicant, shall be made upon blanks furnished by the board. Each applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over, of good moral character, and a graduate of an approved veterinary school shall, upon payment of fifty dollars, be examined and, if found qualified by the board, shall be registered as a veterinarian and shall receive a certificate thereof, signed by the chairman and secretary. An applicant aggrieved by the refusal of the board to approve a school of veterinary medicine under this section shall be entitled to have the reasonableness of such refusal reviewed by a justice of the superior court, whose decision shall be final. An applicant failing to pass an examination satisfactory to the board may be deemed a "Conditional" applicant and may be reexamined only on that portion of the examination failed, upon payment of the established fee for each appearance, at such time and place as the board shall determine. The board may refuse to grant a license to any person who shall have been convicted of a felony, or who shall be addicted to any vice to such a degree as to render him unfit to practice veterinary medicine, and after due notice and hearing may revoke any certificate issued by it and cancel the registration of any veterinarian convicted of a crime in the practice of his profession, and may at any time after the expiration of one year thereafter reissue any certificate so revoked, and register anew any veterinarian whose registration was so cancelled.

Every registered veterinarian shall annually, before March first, pay to the board a license fee of fifteen dollars, in default of which the board may revoke his license and his authority to practice veterinary medicine thereunder, after a hearing as provided by section eleven; but the payment of said fee at or before the time of hearing, with such additional sum not exceeding twenty-five dollars, as may be fixed by the board, shall remove the default. A veterinarian duly registered and licensed to practice in this commonwealth, whose license has not been revoked, but who shall have temporarily retired from practice or removed from the commonwealth for a period not exceeding five years, and shall have notified the board of such retirement or removal, may register upon paying the lapsed annual license fee and filing with the board his affidavit as to the facts aforesaid. Applications for renewals of licenses hereunder shall be upon forms prescribed by the board, and shall, no less than thirty days prior to March first in each year, be mailed to each veterinarian registered with the board.

The board shall, upon the request of any college, university, or school of veterinary medicine in the commonwealth, inspect said college, university, or school and notify its trustees or other governing body in writing if it is approved by the board for the purposes of this section, or, if not, what steps it must take in order to gain the approval of the board.

Any college, university, or school of veterinary medicine desiring to be approved for the purposes of this section may file with the board a written request for the approval of such college, university, or school of veterinary medicine, and thereupon a public hearing, after due notice, shall be seasonably granted by the board and a written decision made by it within twenty days after the termination of such hearing and the applicant for such approval shall be notified of such decision. A written decision of the board refusing to approve any college, university, or school of veterinary medicine shall not become effective until thirty days after written notice of such decision is given to the college, university, or school of veterinary medicine seeking such approval. Any college, university, or school of veterinary medicine aggrieved by such refusal shall have the right to file a petition in the superior court for Suffolk county to revise or reverse the decision of the board. Notice of the entry of such petition shall be given to the secretary of the board and all proceedings connected therewith shall be according to rules regulating the trial of civil cases without juries. The court shall hear the case and finally determine whether or not such approval shall be granted or revised.

Upon the filing of such a petition within the aforesaid period of thirty days, said decision of the board shall not become effective until a final decree affirming said decision is entered upon the aforesaid petition.

Amended by St.1937, c. 66; St.1939, c. 251, § 1; St.1945, c. 724; St.1951, c. 433, § 1; St.1952, c. 585, § 24; St.1957, c. 492; St.1958, c. 533, § 4; St. 1965, c. 46; St.1967, c. 347, § 6; St.1968, c. 538, §§ 1 to 3; St.1972, c. 684, § 29; St.1973, c. 925, § 21; St.1974, c. 810, § 6; St.1975, c. 451, § 3.

§ 56. Examinations

Examinations shall be in part in writing, shall be in English, and of a scientific and practical character. They shall include the subjects of anatomy, surgery, physiology, animal parasites, obstetrics, pathology, bacteriology, diagnosis and practice, therapeutics, pharmacology, veterinary dentistry and other subjects thought proper by the board to test the applicants' fitness to practice veterinary medicine.

Amended by St.1958, c. 533, § 5.

§ 56A. Temporary permits; revocation; aliens

The board may issue without examination a temporary permit to practice veterinary medicine in the commonwealth to any citizen of the United States who is a graduate of an approved veterinary school. Such temporary permit may be granted for a period not to exceed one year, providing that said person write the next set of examinations and also providing said person is employed by and practices his profession under the general supervision and control of a duly licensed veterinarian practicing in the commonwealth. Such temporary permit may be summarily revoked by a majority vote of the board.

The board may issue with an examination a temporary permit to practice veterinary medicine in the commonwealth to any alien who is a graduate veterinarian and certified by the American Veterinary Medical Association; provided that said person is employed by and practices his profession under the general supervision and control of a duly licensed veterinarian practicing in the commonwealth. Such temporary permit may be granted for limited period as shall be determined by the board, and may be summarily revoked by a majority vote of the board.

Added by St.1963, c. 468. Amended by St.1974, c. 810, § 7.

§ 56B. Prescriptions on hospital or clinic blanks; printing of veterinarian's name required

Every registered veterinarian who writes a prescription upon a prescription blank of a hospital or clinic shall print or type his name directly below his signature thereon.

Added by St.1973, c. 173, § 4.

§ 56C. Out-of-state veterinarians; examination; registration; reciprocity

Any person who is a licensed or registered veterinarian in another state and who has been engaged in the practice of veterinary medicine for at least five consecutive years, and who presents to the board a copy of his certificate of registration or license, certified or attested under seal by the board of examiners or like board of any other state board whose standards in the opinion of the board are equivalent to the requirements of the commonwealth, may, upon application, accompanied by a fee of seventy-five dollars, be given a practical examination, without examination on the theory of veterinary medicine, by the board, and if he demonstrates to said board his fitness to practice veterinary medicine, be registered as a veterinarian, and shall receive a certificate thereof; provided, that the applicant intends to remove to and reside in the commonwealth; and provided further, that such other state accords similar privilege to veterinarians registered under the laws of the commonwealth and removing to such other state.

Added by St.1975, c. 451, § 4.

§ 57. Register; annual reports; investigation of complaints

The board shall keep a register of all veterinarians registered by it, which shall be open to public inspection, and shall make an annual report. It shall investigate all complaints of the violation of any provision of section fifty-nine and of section sixty-five, so far as it relates to veterinary medicine, and report the same to the proper prosecuting officers.

§ 58. Practicing veterinary medicine; definition

Any person shall be regarded as practicing veterinary medicine within the meaning of this section who either directly or indirectly, diagnoses, makes a prognosis, treats, administers, prescribes, operates on, manipulates or applies any drug, biologic, or chemical or any apparatus or appliance for any disease, pain, deformity, defect, injury, wound or physical condition of any animal for the prevention of or to test the presence of any disease, or who cuts any tissue, muscle, organ or structure of any animal for the above described purposes or purpose or for the purpose of altering the natural condition of any animal or for any other purpose, cause or reason whatsoever or who holds himself out as being able, available or legally authorized so to do.

The term "practicing veterinary medicine" does not include:

1. The calling into the commonwealth for consultation of duly licensed or registered veterinarians of any other state with respect to any case under treatment by a veterinarian registered under the provisions of section five. Any specialist in the health or zoological field may be called in for consultation in these special fields by a veterinarian licensed in the commonwealth and may collect a reasonable fee for such consultation.

2. The experimentation and research of a registered physician, dentist, osteopath, pharmacist or veterinarian.

3. The lawful experimentation and research activities conducted at any hospital, laboratory, or educational institution approved by the board, or conducted under the general supervision and control of a registered veterinarian, physician, dentist, or osteopath.

4. The gratuitous giving of aid or relief to an animal in an accident or emergency, provided the person giving the aid or relief does not represent himself as a registered veterinarian.

5. The nursing care to animals in the establishment or facilities of a registered veterinarian under his general supervision, direction and control, by the employees of the veterinarian or the assisting of a veterinarian during the course of any procedure or treatment.

6. The advising with respect to or performance of acts by a person which the board by rule has prescribed as accepted livestock management practices.

7. The performing of veterinary or surgical works or the giving of advice to his neighbors by a person, provided that he does not hold himself out as a registered veterinarian or receive pecuniary consideration.

8. The drawing of blood by animal health inspectors of the division of animal health of the Massachusetts department of food and agriculture or of the animal and plant health inspection service of the United States department of agriculture in connection with the programs to control and eradicate brucellosis in animals; provided, that said animal health inspectors are supervised by the chief veterinary health officer of said division of animal health of the Massachusetts department of food and agriculture and trained by said chief or the area veterinarian in charge of veterinary services of said animal and plant inspection service.

Amended by St.1974, c. 810, § 8; St.1977, c. 132.

§ 58A. Emergency care to domestic animals; exemption from civil liability

Any veterinarian duly registered under the provisions of section fifty-five, or who is a resident of another state or in the District of Columbia and duly registered therein who, in good faith, as a volunteer and without fee, renders emergency care or treatment to a domestic animal other than in the ordinary course of his practice shall not be liable in a suit for damages as a result of his acts or omissions which may occur during such emergency care or treatment, nor shall he be liable to any animal hospital for its expenses if under such emergency conditions he orders an animal hospitalized or causes his admission to such hospital.

Added by St.1973, c. 503.

§ 59. Illegal practice of veterinary medicine; penalty; powers of board; causes for revocation of license

Any person who, not then being lawfully authorized to practice veterinary medicine and being so registered or exempt from registration, all as defined in the previous section, shall practice or attempt to practice veterinary medicine or who held himself out to the public as a practitioner of veterinary medicine, whether by signs, words, advertisement, listing in directories, the use of the title "doctor" or any abbreviation thereof or any title including "V.S.", or by the use of any other means implying a practitioner of veterinary medicine or any of its branches, fraudulently uses any posted degree, diploma, or certificate implying a practitioner of veterinary medicine or any of its branches, or who opens an office or maintains an establishment or facilities for the purpose of or with the intention of practicing veterinary medicine shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than ninety days and upon a subsequent conviction shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months, or both. Any registered veterinarian or incorporated veterinary hospital or company who or which knowingly employs or permits a person to practice veterinary medicine unless such person is registered, shall be punished by having his license to practice veterinary medicine revoked, or its license to operate a veterinary hospital suspended, as the case may be, and by a fine of not more than two hundred dollars or by imprisonment for not more than three months, or both.

By majority vote of the entire five members the board may, for any cause set forth in this section, revoke or suspend for a certain time the license of any person to practice veterinary medicine in the commonwealth after notice and hearing.

Cause for which the board may revoke or suspend a license are as follows:

1. The employment of fraud, misrepresentation or deception in obtaining such license.

2. Conviction of a felony, in which case the record of such conviction shall be conclusive evidence.

3. Chronic inebriety or habitual use of drugs.

4. Having professional connection with or lending the use of his name to any illegal practitioner of veterinary medicine and the various branches thereof.

5. Conviction of a violation of any state or federal law, regulating narcotics, or a settlement of a tax liability in connection with such violation, in which case the record of such conviction or settlement, as the case may be, shall be conclusive evidence.

6. Fraud or dishonesty in applying or reporting tuberculin or other biological tests.

7. False or misleading advertising having for its purpose or intent deception or fraud.

8. Conduct reflecting unfavorably on the profession of veterinary medicine.

9. Conviction on a charge of cruelty to animals.

10. Failure of a registered veterinarian to keep his office or hospital and equipment therein in a clean and sanitary condition.

Amended by St.1948, c. 224; St.1958, c. 533, § 6; St.1974, c 810, § 9; St. 1975, c. 451, § 5.

§ 59A. Disposal of abandoned animals; notice

Any veterinarian may dispose of any animal abandoned in his establishment, provided he shall give notice of his intention to do so to the owner at his last known address by registered or certified mail, return receipt requested, and has allowed a period of ten days to elapse after the receipt if returned before disposing of such animal.

Added by St.1974, c. 810, § 10.

§ 60. Application of sections 54 to 59; emergency advice or service

Sections fifty-four to fifty-nine, inclusive, shall not prohibit advice or service, in a case of emergency, by a person other than a registered veterinarian, nor shall they prohibit farmers from rendering services to their neighbors, if they do not hold themselves out as registered veterinarians, nor shall they be held to discriminate against any particular school or system of veterinary medicine. They shall not apply to a commissioned veterinarian of the United States army in the performance of his official duty; nor to a veterinarian from another state who is a legal practitioner in that state, when in actual consultation with a legal practitioner of this commonwealth; nor to any registered pharmacist prescribing gratuitously, if he does not violate section fifty-nine.

Amended by St.1974, c. 810, § 11.

GENERAL PROVISIONS RELATIVE TO EACH BOARD OF REGISTRATION OR EXAMINATION IN THE DIVISION OF REGISTRATION OF THE DEPARTMENT OF CIVIL SERVICE AND REGISTRATION

§ 61. Suspension, revocation or cancellation of certificate, registration, license or authority by boards

Except as otherwise provided by law, each board of registration or examination in the division of registration of the department of civil service and registration, after a hearing, may, by a majority vote of the whole board, suspend, revoke or cancel any certificate, registration, license or authority issued by it, if it appears to the board that the holder of such certificate, registration, license or authority, is insane, or is guilty of deceit, malpractice, gross misconduct in the practice of his profession, or of any offence against the laws of the commonwealth relating thereto. Any person whose certificate, registration, license or authority is suspended or revoked hereunder shall also be liable to such other punishment as may be provided by law. The said boards may make such rules and regulations as they deem proper for the filing of charges and the conduct of hearings.

Each such board, if it appears after a hearing that a statement in an application to it for certification, registration, licensure or authority, which is required to be under oath or affirmation or to contain or be verified by a written declaration that it is made under penalties of perjury, is false and known to the applicant to be false, shall refuse to grant or issue or shall revoke or cancel such certificate, registration, license or authority. The provisions of this paragraph shall not affect, but shall be in addition to, any other penalty provided by law.

Except as otherwise provided in this chapter, no such board shall make any rule or regulation prohibiting the advertising or dissemination of truthful information concerning the price, nature and availability of goods and services to consumers, the effect of which would restrain trade or lessen competition.

Amended by St.1963, c. 241, §§ 2, 3; St.1978, c. 508, § 5.

§ 62. Hearings

Any person against whom charges are filed shall be notified of the hearing thereof, and may appear with witnesses and be heard by counsel. If such person has left the commonwealth, or cannot be found by reasonable search, notice may be dispensed with. Said boards shall have the same powers to summon witnesses to attend such hearings, and to swear them as are conferred upon city councils and other bodies by section eight of chapter two hundred and thirty-three, and said section and sections nine and ten of said chapter shall apply to witnesses summoned as aforesaid.

§ 63. Pendency of action before criminal court; delay; pendency of charge before board; continuance

Said boards shall not defer action upon any charge before them until the conviction of the person accused, nor shall the pendency of any charge before any of said boards act as a continuance or ground for delay in a criminal action.

§ 64. Review by supreme judicial court of suspension, revocation or cancellation order; decree

The supreme judicial court, upon petition of a person whose certificate, registration, license or authority has been suspended, revoked or cancelled, may enter a decree revising or reversing the decision of the board, in accordance with the standards for review provided in paragraph (8) of section fourteen of chapter thirty A; but prior to the entry of such decree no order shall be made or entered by the court to stay or supersede any suspension, revocation or cancellation of any such certificate, registration, license or authority.

As amended St.1954, c. 681, § 9.

§ 65. Practice during suspension, revocation or cancellation of registration, certificate or license

Whoever continues to practice any profession or calling after his certificate, registration, license or authority authorizing him so to do has been suspended, revoked or cancelled under authority of section sixty-one, and while such disability continues, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than three months, or both.

REGISTRATION OF OPTOMETRISTS

§ 66. Practice of optometry; definition

The practice of optometry, as referred to in sections sixty-seven to seventy-three, inclusive, is hereby defined to be the employment of any method or means, other than the use of drugs, for the diagnosis of any optical defect, deficiency or deformity of the human eye, or visual or muscular anomaly of the visual system, or the adaptation or prescribing of lenses, prisms or ocular exercises for the correction, relief or aid of the visual functions.

Amended by St.1934, c. 339, § 2.

§ 67. Board of registration; records; inspection; rules and regulations; reports

The board of registration in optometry, herein and in sections sixty-eight to seventy-three, inclusive, called the board, shall keep a record of the names of all persons examined and registered by it and of all moneys received and disbursed by it, and a duplicate thereof shall be open to public inspection in the office of the state secretary. The board shall make rules and regulations governing its procedure, governing registration and applications therefor, and governing the practice of optometry. Said rules and regulations shall be consistent with the provisions of sections sixteen to eighteen, inclusive, of chapter thirteen and sections sixty-six to seventy-three, inclusive, of this chapter. The board shall make an annual report of the condition of optometry in the commonwealth.

Amended by St.1934, c. 339, § 2.

§ 68. Registration of optometrists; examinations; fees; certificate; exemption from written examination

No person, except as otherwise provided in this section, shall practice optometry until he shall have passed an examination conducted by the board in theoretic, practical and physiological optics, in theoretic and practical optometry and in the anatomy and physiology of the eye, and shall have demonstrated his ability to properly use the ophthalmoscope, the retinoscope, the perimeter and other scientific instruments and methods used in the practice of optometry, and shall have been registered and shall have received a certificate of registration which shall have conspicuously printed on its face the definition of optometry set forth in section sixty-six. Every applicant for examination shall present satisfactory evidence, in the form of affidavits properly sworn to, that he is eighteen years of age or older and of good moral character, that he has graduated from a high school having a course of study of four years and approved by the board or has had a preliminary education equivalent to at least four years in a public high school, and that he has graduated from a school or college of optometry, approved by the board, maintaining a course of study of not less than two years with a minimum requirement of fifteen hundred attendance hours, or, in case of a person applying for a first examination after January first, nineteen hundred and thirty-five, maintaining a course of study of not less than three separate academic years, each academic year consisting of thirty-six weeks of classroom work with thirty-five hours of instruction each week; provided, that if an applicant is unable to prove graduation from, or four years actual attendance at a high school, the board shall determine his preliminary educational qualifications by a proper and separate examination, the fee for which shall be five dollars, to be paid by the applicant. The fee for the examination for registration shall be twenty-five dollars, and those passing the examination shall receive the certificate of registration without additional charge. Any applicant who fails to pass a satisfactory examination for registration shall be entitled at any subsequent regular examination held by the board to additional examinations, and for each subsequent examination a fee of five dollars shall be paid.

Any person who shall present to the board a certified copy or certificate of registration or license which was issued to him after examination by a board of registration in optometry in any other state, where the requirements for registration are in the opinion of the board equivalent to those of this commonwealth, may be registered and given a certificate of registration in this commonwealth without a written examination; provided, that such state accords a like privilege to holders of certificates of registration issued in this commonwealth, and that the applicant has not previously failed to pass the examination required in this commonwealth, and that he has been engaged in the reputable practice of optometry continuously for not less than three years immediately preceding his application, and that he intends to reside and practice optometry in this commonwealth. The fee for such registration shall be fifty dollars.

Amended by St.1934, c. 399, § 2; St.1973, c. 925, § 22.

§ 69. Annual license fees; revocation of certificate; renewal of registration, educational requirement

Every registered optometrist shall, annually, before February first, pay to the board a license fee of five dollars, in default of which the board may revoke his certificate and his authority to practice optometry thereunder, after a hearing as provided by section seventy-one; but the payment of said fee at or before the time of hearing, with such additional sum, not exceeding five dollars, as may be fixed by the board, shall remove the default. An optometrist duly registered and licensed to practice in this commonwealth, whose license has not been revoked, but who shall have temporarily retired from practice or removed from the commonwealth for not exceeding five years, and shall have notified the board of such retirement or removal, may register upon paying the lapsed annual license fees and filing with the board his affidavit as to the facts aforesaid.

Every optometrist registered under the provisions of this chapter shall, as a condition of continuation of his registration, present to the board, on or before February first in each year on such form as it may provide, evidence satisfactory to the board that in the preceding year he attended an educational conference or pursued an educational program within the commonwealth, in conformity with such requirements relating thereto as the board may from time to time establish by regulation.

Amended by St.1934, c. 339, § 2; St.1949, c. 463; St.1974, c. 716.

§ 70. Recording of certificate of registration by city or town clerk; fees; display of certificate

Every person to whom a certificate of registration has been granted shall cause the same to be recorded in the office of the clerk of the city or town where he principally carries on the practice of optometry; and if he removes his principal office from one city or town to another in the commonwealth, he shall, before engaging in practice in such other city or town, notify the board in writing of the place where he is to engage in practice, and obtain from the clerk of the city or town where his certificate is recorded a certified copy thereof and file the same with the clerk of such other city or town. The fee for recording such certificate or issuing a certified copy thereof shall be as provided by clause (57) of section thirty-four of chapter two hundred and sixty-two. Every registered optometrist shall display his certificate of registration in a conspicuous place in the principal office wherein he practices optometry, and shall, whenever so required, exhibit it to said board or its authorized representative; and whenever practicing optometry outside of or away from his principal office or place of business, he shall deliver to each customer or person fitted with glasses by him a memorandum of purchase, containing his signature, home post office address and the number of his certificate of registration, together with a specification of the lenses and frames or mountings furnished and the price charged therefor.

Amended by St.1934, c. 339, § 2; St.1948, c. 550, § 20.

§ 71. Refusal to grant certificate; revocation or suspension; hearing; notice; renewal

The board may refuse to grant a certificate of registration to any applicant found guilty of fraud in making application or taking an examination for registration. The board may revoke or suspend any certificate of registration for unprofessional conduct, for fraud, deceit or misrepresentation in practice or in advertising, for conviction of crime, for habitual drunkenness for six months immediately before the charges are made, for gross incompetence, or for violation of any rule or regulation made under section sixty-seven; provided, that before any action is taken the accused party shall have written notice of the charges against him and of the day appointed for a public hearing thereon, which shall be at least five days after the service of such notice. At such hearing the accused shall have an opportunity to produce testimony in his own behalf and to confront the witnesses against him. Three members of the board shall be a quorum for any such hearing. Witnesses at hearings before the board shall testify on oath, and may be sworn by any member thereof. The board may compel the attendance of witnesses and the production of documents at any such hearing. Whenever the certificate of any registered optometrist is revoked or suspended, such certificate shall be returned to the board, on demand, and the secretary of the board shall give notice of such revocation or suspension to the clerk of the town wherein the principal office of such optometrist is located, and the clerk shall record the revocation or suspension on the records of his office. Where the right of any person to practice has been revoked as herein provided, the board may, after the expiration of one year, receive an application for a renewal of the right to practice, and upon such new application it may grant such a renewal.

Amended by St.1934, c. 339, § 2.

§ 72. Name of optometric practice

No optometric practice, other than an optometric clinic approved by the board and operated and conducted on a non-profit basis by a school or college of optometry or an association of registered optometrists, shall be conducted under any name other than that of the optometrist or optometrists actually conducting such practice.

Added by St.1934, c. 339, § 2. Amended by St.1938, c. 434, § 1.

§ 72A. Unlawful practice of optometry; violation of rules and regulations; penalties

Whoever, not being lawfully authorized to practice optometry, practices optometry, or holds himself out as a practitioner of, or as being able to practice, optometry, or whoever personates another practitioner, or violates any other provision of sections sixty-six to seventy-three, inclusive, or any rule or regulation made under authority thereof, shall, except as provided in section sixty-five, be punished for the first offence by a fine of not less than fifty nor more than two hundred dollars, or by imprisonment for not more than three months, or both; and for a subsequent offence, by a fine of not less than two hundred nor more than five hundred dollars, or by imprisonment for not less than three nor more than six months, or both.

Added by St.1934, c. 339, § 2.

§ 73. Application of sections 66 to 72A

Sections sixty-six to seventy-two A, inclusive, shall not apply to physicians and surgeons lawfully entitled to practice medicine in the commonwealth, or to persons who neither practice nor profess to practice optometry, but who sell spectacles, eyeglasses or lenses, either on prescription from such physicians or surgeons, or from optometrists authorized to practice in the commonwealth, or as merchandise from permanently located and established places of business when not sold for the purpose of correcting defective vision; nor shall said sections prevent the widow or widower of a registered optometrist, or the wife or husband of a registered optometrist who is incapacitated, from continuing the practice of optometry under a registered optometrist. Nothing herein contained shall prevent any such physician or surgeon from taking an examination and receiving a certificate of registration under section sixty-eight, nor shall this section and sections sixty-six to seventy-two A, inclusive, authorize any person to administer drugs in any form, to practice or claim to practice medicine or surgery in any sense, or to use any title or appellation intended or calculated to indicate the practice of medicine or surgery.

Amended by St.1934, c. 339, § 2; St.1938, c. 434, § 2.

§ 73A. Advertising restrictions; violations; penalties

Persons may advertise the sale price of eyeglasses, contact lenses or eyeglass frames provided they shall not include in any newspaper, radio, display sign or other advertisements any statement of a character tending to deceive or mislead the public, or, any statement which in any way misrepresents any material or service or credit terms, or, any statement containing the words "free examination of eyes", "free advice", "free consultation", "consultation without obligation", or any other words or phrases of similar import which convey the impression that eyes are examined free. Any advertisement offering contact lenses, eyeglasses, or eyeglass frames at a fixed price shall include a statement which indicates that said price does not include eye examination and professional services. Such statement shall indicate whether said price includes lens and, if so, the type of lens, single vision, bi-focal or tri-focal and the strength thereof, low, medium or high.

Whoever violates any provision of this section shall be punished for the first offense by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than three months, or both, and for a subsequent offense by a fine of not less than two hundred dollars nor more than five hundred dollars or by imprisonment for not less than three nor more than six months, or both.

Added by St.1937, c. 287, § 1. Amended by St.1976, c. 91.

§ 73B. Practice of optometry on premises whereon eyeglasses, lenses or frames are sold; unauthorized receipt of fees from practice of optometry

No person shall practice optometry on premises not separate from premises whereon eyeglasses, lenses, or eyeglass frames are sold by any other person; nor shall any person practice optometry under any lease, contract or other arrangement whereby any person, not duly authorized to practice optometry, shares, directly or indirectly, in any fees received in connection with said practice of optometry. For the purposes of this section, any room or suite of rooms in which optometry is practiced shall be considered separate premises if it has a separate and direct entrance from a street or public corridor, whether or not it has an entrance from any other room in the same building. Whoever violates any provision of this section shall be punished by a fine of not less than fifty nor more than five hundred dollars, or by imprisonment for not more than six months, or both.

Added by St.1938, c. 434, § 3.

REGISTRATION AND LICENSING OF DISPENSING OPTICIANS

§ 73C. Dispensing optician; definition

A dispensing optician as referred to in sections seventy-three D to seventy-three L, inclusive, is a person who prepares and dispenses lenses, spectacles, eyeglasses and appliances thereto to the intended wearer thereof on written prescriptions from a duly registered physician or optometrist, and, in accordance with such prescriptions, interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses or appliances thereto to the human face for the aid or correction of visual or occular anomalies of the human eyes. The services, lenses, spectacles, eyeglasses and appliances shall be dispensed, furnished or supplied to the intended wearer or user thereof only upon prescription issued by such physician or optometrist and only after the dispensing optician has verified that any such lenses, spectacles, eyeglasses and appliances thereto conform to such prescription; but duplications, replacements, reproductions or repetitions may be done at retail without prescription, in which event any such act shall be construed as that of a dispensing optician as if performed on the basis of the original written prescription.

Added by St.1955, c. 688, § 2. Amended by St.1967, c. 152.

§ 73D. Licensing of dispensing opticians

No person or corporation shall directly or indirectly engage in practice as a dispensing optician, unless he or the person employed by such corporation has been granted a license by the board of registration of dispensing opticians referred to in sections seventy-three E to seventy-three L, inclusive, as the board.

Added by St.1955, c. 688, § 2.

§ 73E. Applications for registration; examinations; licenses; fees; exemption from written examination

Application for registration as a dispensing optician may be made by any citizen who pays a fee of twenty-five dollars and furnishes the board with proof that he has received at least three years training and experience in such dispensing under the personal supervision of a licensed dispensing optician, registered physician or optometrist, or that he has completed a regular day course of not less than twelve months or a regular night course of not less than eighteen months nor in any case less than six hundred hours in an approved school or college which maintains educational requirements satisfactory to the board. The board shall thereupon give such applicant a written or practical examination, or both, to determine whether he possesses the ability, knowledge and fitness properly to engage in practice as a dispensing optician. If the applicant passes such examination and has reached the age of eighteen years, he shall be granted a license signed by the chairman and secretary of the board; if he passes such examination and has not reached said age, he shall be granted such license when he is eighteen years of age.

Any applicant who fails to pass such examination shall be entitled to take additional examinations, and for each subsequent examination a fee of five dollars shall be paid by such applicant.

Any person who shall have been a licensed or registered optician in another state and shall present to the board a copy of his certificate of registration or license, certified or attested under the seal by the board of registration of opticians or similar board in any other state where the requirements for registration are, in the opinion of the board, equivalent to those in this commonwealth, may be licensed as provided herein, without written examination, upon payment of a fee of twenty-five dollars; provided, that such state accords similar privilege to those holding licenses issued by this commonwealth; and provided, further, that the applicant shall not have previously failed to pass an examination required in this commonwealth within five years, and that he intends to reside and practice as a dispensing optician in this commonwealth. Every dispensing optician shall conspicuously display his license in his place of business or employment, and shall, whenever so required, exhibit it to the board or its authorized representatives.

Added by St.1955, c. 688, § 2. Amended by St.1967, c. 440; St.1973, c. 925, § 23.

§ 73F. Records of board; annual reports; rules and regulations

The board shall keep a record of the names of all persons examined and licensed by it and all moneys received and disbursed by it, and a duplicate thereof shall be open to public inspection in the office of the state secretary. The board shall make an annual report of its doings including a statement of its receipts and expenditures during the preceding year. The board shall make such rules and regulations consistent with law as may be necessary to administer sections seventy-three C to seventy-three L, inclusive.

Added by St.1955, c. 688, § 2.

§ 73G. License fees

Every licensed dispensing optician shall, biennially, on or before his birthday, pay to the board a license fee of ten dollars, in default of which the board may, after a hearing, revoke or suspend his license; but the payment of the said fee at or before the time of hearing, with such additional sum, not exceeding ten dollars, as may be fixed by the board shall remove the default, revocation or suspension. A licensed dispensing optician whose license has not been revoked but who shall have temporarily retired from practice or removed from the commonwealth for not exceeding five years but who shall have notified the board of such retirement or removal, may register upon paying the lapsed annual license fees and filing with the board his affidavit as to the facts aforesaid.

Added by St.1955, c. 688, § 2, as amended St.1956, c. 164.

§ 73H. Refusal to grant license; suspension; revocation; hearing; notice

The board may refuse to grant or may suspend for a definite time or may revoke any license of any person found guilty of fraud, deceit or misrepresentation or in aiding or abetting the same in connection with any application or taking of an examination for license, or who has rendered himself unable to properly carry on his work as a licensed dispensing optician as a result of the voluntary use of intoxicating liquors or drugs, or for conviction in any court of the commonwealth of a crime involving moral turpitude or for the violation of any provision of sections seventy-three C to seventy-three L, inclusive, or of any rule or regulation of the board; provided, that the board gives such person a written notice, at least ten days before the date of the hearing, specifying any charges that may have been made against him, and setting forth the time and place for hearing said charges. Such hearing shall be conducted by the board, and three members shall constitute a quorum. The person accused shall be given opportunity to produce testimony in his own behalf, shall be confronted by witnesses against him, and shall be allowed representation by counsel. The board may compel the production of documents at any hearing, and the attendance of witnesses who shall testify under oath, administered by any member of the board. The fee for witnesses shall be three dollars per day for attendance and five cents per mile for travel. If the board after such hearing refuses to grant, or revokes or suspends the license of any person, it shall forthwith notify such person of its decision in writing. The provisions of section sixty-four shall apply to any person whose license or authority has been refused, suspended or revoked.

Added by St.1955, c. 688, § 2.

§ 73*I*. Illegal practice

Whoever, not being duly licensed as a dispensing optician, compounds and dispenses, at retail, prescriptions of physicians or optometrists for eyeglasses and lenses or makes duplicates thereof at retail, or holds himself out as a dispensing optician as defined in section seventy-three C, or violates any other provision of sections seventy-three C to seventy-three L, inclusive, or any rule or regulation of the board, shall be punished by a fine of not less than twenty-five dollars, or by imprisonment for not more than three months, or both.

Added by St.1955, c. 688, § 2.

§ 73J. Application of sections 73C to 73L to registered physicians or optometrists

The provisions of sections seventy-three C to seventy-three L, inclusive, shall not apply to registered physicians or optometrists.

Added by St.1955, c. 688, § 2.

§ 73K. Certification as apprentice; application; fee; certificate; powers of apprentice

Any person entering the employ of a physician, optometrist, licensed dispensing optician as an apprentice for the purpose of obtaining the experience and training referred to in section seventy-three E, may make written application for certification as an apprentice with the board. Such application shall be made upon a form prescribed by the board and shall be accompanied by a certificate of the employer, verifying the statements made by the applicant. The applicant shall pay a filing fee of one dollar with such application. The board shall, upon approval of such application, issue to the applicant an apprentice's certificate, and thereupon the computation of any period of training and experience referred to in section seventy-three E shall begin. Any person who may have served part of his apprenticeship in any state or country not requiring such certification shall be obliged to give proof of such service satisfactory to the board. Time spent as an apprentice in the employ of a dispensing optician or a registered physician or optometrist prior to January first, nineteen hundred and fifty-six, shall be credited to the apprentice at such time of certification upon satisfactory proof of such service furnished to the board. A certified apprentice may perform any of the acts set forth in section seventy-three C under the personal supervision of a licensed dispensing optician, optometrist or physician.

Added by St.1955, c. 688, § 2.

§ 73L. Revocation of order of suspension; granting of new licenses; hearing

The board may, upon application and after hearing, revoke an order of suspension or grant a new license to any person whose license has been revoked or suspended under the provisions of section seventy-three H, if the board is satisfied that this can be done consistently with the public interest.

Added by St.1955, c. 688, § 2.

REGISTRATION OF NURSES

§ 74. Registration of nurses; examinations; fees; certificate; rules and regulations

The board of registration in nursing, in this section and in sections seventy-four A to seventy-nine, inclusive, eighty-one A, eighty-one B and eighty-one C, called the board, shall hold simultaneous examinations for the registration of nurses in the cities of Boston, Worcester, Springfield and Pittsfield at such times as it shall determine. Applications for registration, signed and sworn to by the applicant, shall be made on blanks furnished by the board. An applicant who furnishes satisfactory proof that he is of good moral character and a graduate of a school for nurses approved by the board shall, upon payment of thirty dollars, be examined by the board, and, if found qualified, shall be registered, with a right to use the title registered nurse and to practice as such, and shall receive a certificate thereof from the board. An applicant failing to pass an examination satisfactory to the board shall be entitled to additional examinations under the rules of the board but shall file a new application and pay a fee of thirty dollars for each such examination. Every person registered hereunder who continues to hold himself out as a registered nurse shall, on or before his birthday in each even-numbered year, renew his registration for the ensuing two-year period by payment of six dollars to the board, and thereupon the board shall issue a certificate showing that the holder thereof is entitled to practice as a registered nurse for the period covered by said payment; provided, that if a birthday of any person who shall be registered hereunder shall occur within three months after such original registration, such person need not renew his registration until the birthday in the even-numbered year next following the birthday aforesaid; and provided, further, that beginning January first, nineteen hundred and eighty-two, every person seeking renewal or registration hereunder shall provide evidence of such continuing education as the board shall require by regulation unless the board accepts the training and experience of any such person in lieu of said continuing education requirement. The board shall promulgate rules and regulations not later than January first, nineteen hundred and eighty as to the type and amount of continuing education required for such nurse as a qualification for licensing or relicensing; criteria for approved programs, which shall not exclude programs offered by health care facilities licensed by the department of public health or educational institutions chartered by the commonwealth; procedure for the approval of programs; mechanism for the verification of compliance by each person seeking renewal or registration and provision for inactive status. The board shall have the authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the continuing education requirements; provided, however, that no such rule or regulation shall take effect before the thirtieth day following the date when a copy of the rule or regulation is filed with the joint legislative committee on health care of the general court. Said regulations shall provide, however, that the maximum number of hours required shall not exceed five hours in the registration period beginning January first, nineteen hundred and eighty-two and ending December thirty-first, nineteen hundred and eighty-three, ten hours in the registration period beginning January first, nineteen hundred and eighty-four and ending December thirty-first, nineteen hundred and eighty-five, and fifteen hours in the registration periods thereafter. For the purposes of this section and of section seventy-four A, the birthday of a person born on February twenty-nine shall be deemed to be February twenty-eight. In default of such renewal, a person registered hereunder shall forfeit the right to practice as a registered nurse or to hold himself out as such until such fee shall have been paid. The board, after a hearing, by a vote of a majority of its members, may annul the registration and cancel the certificate of any nurse who has been found guilty of a felony.

Amended by St.1941, c. 620, § 3; St.1948, c. 108; St.1953, c. 350, § 4; St. 1959, c. 415, § 1; St.1960, c. 693, § 8; St.1964, c. 21, § 1; St.1968, c. 572; St.1969, c. 603, § 1; St.1972, c. 684, §§ 31 to 33; St.1973, c. 265, § 1; St.1977, c. 884, § 1.

§ 74A. Registration of practical nurses; examinations and reexaminations; certificate; fees; cancellation of certificate; rules and regulations

The board shall hold examinations for the licensing of practical nurses at such times and places as it shall determine. Applications for licenses as practical nurses, signed and sworn to by the applicants, shall be made on blanks furnished by the board. An applicant who furnishes satisfactory proof that he is of good moral character and that he is a graduate of a school for practical nurses approved by the board or is a graduate of an accredited school of professional nursing or was a student in good standing at an accredited school of professional nursing before completing the program of studies and, at the time of withdrawal, had completed a program of study, theory and clinical practice equivalent to that required for graduation from an approved school of practical nursing, shall, upon payment of thirty dollars, be examined by the board and, if found qualified, shall be licensed, with a right to use the title licensed practical nurse and to practice as such, and shall receive a certificate thereof from the board. An applicant failing to pass an examination satisfactory to the board shall be entitled to additional examinations under the rules of the board but shall file a new application and pay a fee of thirty dollars for each such examination. Every person licensed hereunder who continues to hold himself out as a licensed practical nurse shall, on or before his birthday in each odd-numbered year, renew his license for the ensuing two-year period by payment of six dollars to the board, and thereupon the board shall issue a certificate showing that the holder is entitled to practice as a licensed practical nurse for the period covered by said payment; provided, that if a birthday of any person who shall be licensed hereunder shall occur within three months after such original licensing, such person need not renew his license until the birthday in the odd-numbered year next following the birthday aforesaid; and provided, further, that beginning January first, nineteen hundred and eighty-three, every person seeking renewal or licensing hereunder shall provide evidence of such continuing education as the board shall require by regulation, unless the board accepts the training and experience of any such person in lieu of said continuing education requirements. The board shall promulgate rules and regulations not later than January first, nineteen hundred and eighty, as to the type and amount of continuing education required for such nurse as a qualification for licensing or relicensing; criteria for approved programs, which shall not exclude programs offered by health care facilities licensed by the department of public health or educational institutions chartered by the commonwealth; procedure for the approval of programs; mechanism for the verification of compliance by each person seeking renewal or registration; and provision for inactive status. The board shall have the authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of the continuing education requirements; provided, however, that no such rule or regulation shall take effect before the thirtieth day following the date when a copy of the rule or regulation is filed with the joint legislative committee on health care of the general court. Said regulations shall provide however, that the maximum number of hours required shall not exceed five hours in the registration period beginning January first, nineteen hundred and eighty-three and ending December thirty-first, nineteen hundred and eighty-four, ten hours in the registration period beginning January first, nineteen hundred and eighty-five and ending December thirty-first, nineteen hundred and eighty-six, and fifteen hours in the registration periods thereafter. In default of such renewal, a person licensed hereunder shall forfeit the right to practice as a licensed practical nurse or to hold himself out as such until such fee shall have been paid. The board, after a hearing, by vote of a majority of its members, may annul the license and cancel the certificate of any practical nurse who has been found guilty of a felony.

Added by St.1941, c. 620, § 3. Amended by St.1951, c. 87; St.1953, c. 350, § 5; St.1959, c. 415, § 2; St.1960, c. 693, § 9; St.1964, c. 21, § 2; St.1968, c. 320; St.1969, c. 603, § 2; St.1972, c. 684, §§ 34 to 36; St.1973, c. 265, § 2; St.1977, c. 85; St.1977, c. 884, § 2.

§ 74C. Advisory council on continuing education; membership; appointment

The governor shall appoint an advisory council on continuing education, consisting of seventeen members, three representatives of the public, five licensed practical nurses, three registered nurses with a baccalaureate degree or higher, three registered nurses with an associate degree, and three registered nurses with a diploma in nursing. Of the original appointments to the council, six members shall be appointed for a term of one year, six members shall be appointed for a term of two years, and five members shall be appointed for a term of three years. As the term of office of a member expires, his successor shall be appointed for a term of two years. Said council shall assist the board in evaluating the effects of procedures and requirements for continuing education and periodically recommend revisions to the board. No member shall be appointed for more than two successive terms.

Added by St.1977, c. 884, § 3.

§ 75. Examinations

Examinations shall be wholly or in part in writing, in the English language, shall include the principles and practice of nursing but shall be limited to such subjects as are included in the curriculum established by the board, shall be in content both reasonable and appropriate for nurses or for practical nurses, as the case may be, and shall be sufficiently thorough to test the applicant's fitness to practice.

Amended by St.1941, c. 620, § 3; St.1953, c. 350, § 7; St.1960, c. 693, § 10.

§ 76. Reciprocity registration; fee

The board may register or license in like manner, without examination, any person who has been registered as a nurse or licensed as a practical nurse, as the case may be, in another state under laws which, in the opinion of the board, maintain standards substantially the same as those of this commonwealth for nurses or for practical nurses, as the case may be. The fee for registration or licensing without examination under this section shall be fifty dollars.

Amended by St.1941, c. 620, § 3; St.1953, c. 350, § 8; St.1969, c. 603, § 3; St.1972, c. 684, § 37.

§ 76A. Nurses registered in other jurisdictions; temporary registration

The board may, at its discretion, certify as authorized to practice professional nursing any person who furnishes proof, satisfactory to the board, that he was graduated from an approved school of nursing and that he was registered to practice professional nursing in another jurisdiction. Such certification (1) shall be valid for one year only from the date of the issuance of a certificate thereof, but may be renewed for not more than one additional consecutive year, (2) shall be subject to such rules and regulations as the board may prescribe, including the requirement that such certificate holders shall practice under the supervision of a registered nurse and (3) shall, notwithstanding the provisions of section eighty, entitle such certificate holder to engage in the practice of nursing, subject to such limitations upon the capacity in which he may practice as the board may prescribe, while such certification or renewal is in effect, but only in hospitals or other health care institutions licensed by the commonwealth, in hospitals maintained by the federal government, the commonwealth or any of its political subdivisions, or in conjunction with other public health agencies. The fee for certification under this section shall be thirty dollars and for renewal eight dollars.

Added by St.1966, c. 599, § 1. Amended by St.1969, c. 603, § 4; St.1972, c. 684, § 38.

§ 77. Investigation of complaints; report

The board shall investigate all complaints of violation of sections seventy-four to eighty-one, inclusive, and report the same to the proper prosecuting officers.

Amended by St.1941, c. 620, § 3; St.1957, c. 595, § 1.

§ 78. Records; inspection; annual report

The board shall keep records of the names of all persons registered and licensed by it and of all money received and disbursed by it and duplicates thereof shall be open to public inspection in the office of the state secretary. It shall make an annual report of the condition of nursing in the commonwealth.

Amended by St.1941, c. 620, § 3.

§ 79. Rules and regulations

The board may make such rules and regulations consistent with law relative to its procedure under sections seventy-four to seventy-eight, inclusive, as it deems expedient.

Amended by St.1941, c. 620, § 3.

§ 80. Violations of provisions relating to professional nursing

Whoever, not being lawfully authorized to practice as a registered nurse within the commonwealth, practices or attempts to practice professional nursing or uses the abbreviation R.N., or any other words, letters or figures to indicate that the person using the same is such a registered nurse, shall, except as provided in section sixty-five, be punished by a fine of not more than one hundred dollars; provided, however, that a nonresident, licensed to practice professional nursing in another jurisdiction, may attend upon a nonresident of the commonwealth temporarily abiding here. Whoever becomes or attempts to become registered as a registered nurse or practices or attempts to practice professional nursing under a false or assumed name shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for three months, or both.

Amended by St.1941, c. 620, § 3; St.1957, c. 595, § 2; St.1966, c. 599, § 2.

§ 80A. Violations of provisions relating to practical nursing

Whoever, not being lawfully authorized to practice as a licensed practical nurse within the commonwealth, practices or attempts to practice practical nursing or uses the abbreviation L.P.N., or any other words, letters or figures to indicate that the person using the same is such a licensed practical nurse shall, except as provided in section sixty-five, be punished by a fine of not more than one hundred dollars; provided, however, that a non-resident, licensed to practice practical nursing in another jurisdiction, may so practice in the commonwealth for a period or periods which, in the aggregate, exclusive of any period of time during which such person is in attendance upon a non-resident of the commonwealth temporarily abiding here, does not exceed six months. Whoever becomes or attempts to become licensed as a licensed practical nurse, or practices or attempts to practice practical nursing under a false or assumed name shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for three months, or both.

Added by St.1941, c. 620, § 3. Amended by St.1953, c. 350, § 9; St.1957, c. 595, § 3.

§ 80B. Definitions

For the purposes of sections seventy-four to eighty-one C, inclusive:—

"Professional nursing" shall mean the performance for compensation of any of those services in observing and caring for the ill, injured or infirm, in applying counsel and procedures to safeguard life and health, in administering treatment or medication prescribed by a physician or dentist, or in teaching or supervising others, which are commonly performed by registered nurses and which require specialized knowledge and skill such as are taught and acquired under the established curriculum in a school for nurses duly approved in accordance with this chapter. "Professional nursing" shall also mean the performance of such additional acts by a nurse with appropriate education as are approved by the board and the board of registration and discipline in medicine in rules and regulations which shall be promulgated and implemented by the board, or which are generally recognized by the nursing and medical professions as proper to be performed by a professional nurse with appropriate education. "Appropriate education" shall mean successful completion by a nurse of an educational program approved by the board or compliance by the nurse with equivalent competency standards which may be set forth by the board. "Professional nursing" by a nurse with appropriate education shall not be construed to prevent the performance of additional acts involving evaluation, diagnosis and treatment.

"Practical nursing" shall mean the performance for compensation of any of those services in observing and caring for the ill, injured or infirm, in applying counsel and procedures to safeguard life and health, in administering treatment or medication prescribed by a physician or dentist, or in teaching or supervising others, which are commonly performed by licensed practical nurses and which require specialized knowledge and skill such as are taught and acquired under the established curriculum in a school for practical nurses duly approved in accordance with this chapter.

Neither "professional nursing" nor "practical nursing" shall mean or be construed to prevent: (1) the gratuitous care of any ill, injured or infirm person by any member of his family or any friend, or his care by any person employed primarily as a companion, housekeeper, domestic servant or nursemaid; (2) the performance of any nursing service in an emergency; (3) the performance, by any student enrolled in a school for nurses or practical nurses duly approved in accordance with this chapter, of any nursing service incidental to any prescribed course in such school; (4) the performance of services incidental to the practice of the religious tenets of any church by any member thereof; (5) the performance of nursing service by a person authorized to practice nursing under section seventy-six A, subject to the provisions of said section; (6) the performance of services by physicians, dentists, pharmacists, teachers, health educators, social workers, dieticians, therapists, technicians, and medical students which are commonly recognized to be functions of their respective callings; or (7) the performance of any nursing service for any patient in a convalescent or nursing home or rest home, by any person employed in such home, provided that such nursing service is performed under the supervision of a registered nurse or licensed practical nurse.

Added by St.1957, c. 595, § 4. Amended by St.1963, c. 811, §§ 1, 2; St. 1964, c. 428; St.1967, c. 299; St.1975, c. 846, § 2.

§ 80C. Nurse-midwife; designation; functions

A nurse-midwife who is designated by the board of registration in nursing pursuant to the provisions of section eighty B may engage in the practice of midwifery; provided, however, that the nurse-midwife functions as a member of a health care team which includes a qualified physician licensed to practice medicine in the commonwealth; and provided further, that deliveries by a nurse-midwife take place in facilities licensed by the department of public health for the operation of maternity and newborn services.

Added by St.1977, c. 129.

§ 80D. Nurse-midwifery advisory committee

An advisory committee composed of five practicing nurse-midwives appointed by the board of registration in nursing for a two-year term shall be consulted on matters relating to the practice of nurse-midwifery and shall annually prepare a report informing the board of current functions, standards of practice and qualifications in the practice of nurse-midwifery.

Added by St.1977, c. 129.

§ 81. Application of sections 74 to 80A; government employees

Neither section eighty nor eighty A, as the case may be, shall apply: (1) to any graduate of any school for nurses or practical nurses duly approved in accordance with this chapter, during the period from such person's graduation until announcement of the results of the first licensing examination for registered nurses or licensed practical nurses, as the case may be, thereafter held in accordance with this chapter; and (2) to any person duly licensed to practice nursing within any other jurisdiction, while discharging official duties as an employee of the federal government.

Amended by St.1941, c. 620, § 3; St.1953, c. 350, § 10; St.1957, c. 595, § 5.

§ 81A. Inspection and approval of schools for nurses

The board shall upon the request of any school for nurses or for practical nurses in the commonwealth inspect said school and notify its trustees or other governing body if said school is approved for the purposes of section seventy-four or seventy-four A, as the case may be, and, if not, what steps said school should take in order to gain the approval of the board. It shall from time to time inspect any school already approved and may withdraw its approval thereof. Said board shall notify the trustees or other governing body of each school if it merits continuance of approval, and, if not, may specify what steps the school should take to receive continuance of approval. Said board may make inspections by any of its members or by an agent or agents designated by it for the purpose, and no approval shall be withdrawn unless an inspection has been made. Any such trustees or other governing body aggrieved by an adverse decision of the board shall, on petition, be given a hearing before said board.

Added by St.1941, c. 620, § 3. Amended by St.1953, c. 350, § 11; St.1960, c. 693, § 11.

§ 81B. Approval of schools in other states

The board may approve, for the purposes of sections seventy-four, seventy-four A or seventy-six A, any school for nurses or for practical nurses, as the case may be, in another state or country which maintains standards substantially the same as those required for an approved school in this commonwealth, and which, in the case of a school in another state, is approved by the board for nurses or for practical nurses, or corresponding body, of the state in which the school is situated.

Added by St.1941, c. 620, § 3. Amended by St.1953, c. 350, § 12; St.1960, c. 693, § 12; St.1966, c. 599, § 3.

§ 81C. Rules and regulations relative to nursing schools

The board may make such rules and regulations consistent with law relative to procedure under sections eighty-one A and eighty-one B as it deems expedient, and shall make reasonable rules and regulations concerning the general conduct of approved schools, including the qualifications of the principals and the teachers therein, requirements for admission of students, the curriculum to be taught therein, the teaching equipment, the care of the health of the students and their housing. The board may make such rules and regulations consistent with section eighty B as it deems expedient except that the board[1] registration and discipline in medicine shall jointly approve additional acts, as referred to in said section eighty B.

Added by St.1941, c. 620, § 3. Amended by St.1960, c. 693, § 13; St.1975, c. 846, § 3.

[1] So in original; probably should read "board of".

REGISTRATION OF PROFESSIONAL ENGINEERS AND OF LAND SURVEYORS

§ 81D. Definitions

The following words and phrases as used in sections eighty-one D to eighty-one T, inclusive, hereinafter referred to as said sections, shall, unless the context otherwise requires, have the following meanings:—

"Board", the board of registration of professional engineers and of land surveyors, established by section forty-five of chapter thirteen.

"Professional engineer", a person who, by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design acquired by professional education and practical experience, is qualified to practice engineering, as attested by his registration as a professional engineer; provided, however, that registration as a professional engineer shall not qualify a person to practice as an engineer licensed under chapter one hundred and forty-six.

"Practice of engineering", any professional service or creative work requiring engineering education, training and experience and the application of special knowledge of the mathematical, physical and engineering sciences to such professional services or creative work as consultation, investigation, evaluation, planning, design and supervision of construction for the purpose of assuring compliance with specifications and design, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, but it shall not include the practice of architecture, as defined in section sixty A, except that a registered professional engineer may do such architectural work as is incidental to his work, nor shall it include the practice of land surveying, except that a registered professional engineer qualified in the branch of civil engineering may perform land surveying incidental to his engineering work for locating or relocating any of the fixed works embraced within the practice of civil engineering excluding property line determination.

A person shall be construed to practice or to offer to practice engineering who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer, or through the use of some other title implies that he is a professional engineer; or who holds himself out as able to perform, or who does perform any engineering service or work or any other professional service designated by the practitioner or recognized by educational authorities as engineering. The practice of engineering shall not include the work ordinarily performed by persons who operate, maintain or install machinery or equipment.

"Land surveyor", a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence and all requisite to the surveying of real property and engaged in the practice of land surveying.

"Practice of land surveying", any service or work, the adequate performance of which involves the application of special knowledge of the principles of mathematics, the related physical and applied sciences, and the relevant requirements of law for adequate evidence to the act of measuring and locating lines, angles, elevations, natural and man-made features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water for the purpose of determining areas and volumes, for the monumenting of property boundaries, for locating or relocating any of the fixed works embraced within the practice of civil engineering, and for the platting, and layout of lands and subdivisions thereof, including the topography, alignment and grades of streets, and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.

A person shall be construed to practice or to offer to practice land surveying who engages in land surveying, or who by verbal claim, sign, letterhead, card or in any other way represents himself to be a land surveyor, or through the use of some other title implies that he is a land surveyor, or who represents himself as able to perform, or who does perform any land surveying service or work, or any other service designated by the practitioner which is recognized as land surveying.

Added by St.1941, c. 643, § 2. Renumbered from § 81A and amended by St.1941, c. 722, § 9A; St.1958, c. 584, § 2; St.1970, c. 707, § 3.

§ 81E. Examination of applicants; rules and regulations of board; seal

The board shall examine applicants for registration as professional engineers and as land surveyors and applicants desiring to take written or oral examinations to evidence qualification for registration as professional engineers or land surveyors. It shall make such rules and regulations as are necessary or proper for the conduct of its duties. The board may adopt and shall use an official seal.

If any person, firm, co-partnership, corporation or joint stock association refuses to obey any decision, rule or order, or any part thereof, issued by the board pursuant to its powers, the attorney general of the commonwealth shall, upon request of the board, file a petition in equity for the enforcement of such decision, rule or order in the superior court for Suffolk county or for the county in which such person, firm, co-partnership, corporation or joint stock association resides or has a place of business. After due hearing, with such notice as the court may direct, the court shall order the enforcement of such decision, rule or order, or any part thereof, to the extent that such decision, rule or order, or any part thereof, has been legally and properly made by the board.

The board, for the purposes of registration of professional engineers, shall recognize all the fundamental branches of engineering which shall include, without limiting the generality thereof by specific enumeration, the following fields:—aeronautical, chemical, civil, electrical, heating and ventilating, and air conditioning industrial, mechanical, metallurgical, mining, safety, fire protection, sanitary and structural.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 3; St.1970, c. 707, § 4; St.1975, c. 588, § 1.

§ 81F. Moneys received by secretary of board; bond

The secretary of the board shall receive and account for all moneys received under said sections and shall pay the same to the state treasurer. Said secretary shall give to the state treasurer a bond, in such sum and with such sureties as may from time to time be required by the board under authority of law, for the faithful performance of his duties.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C.

§ 81G. Clerical and other assistance

The board may employ such clerical and other assistance as may be necessary for the proper performance of its work.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C.

§ 81H. Record of board proceedings; register of applications for registration; prima facie evidence; annual report to governor

The board shall keep a full record of its proceedings and a register of applications for registration, which register shall show (*a*) the name, age and residence of each applicant; (*b*) the date of the application; (*c*) the place of business of such applicant; (*d*) his educational and other qualifications; (*e*) whether or not an examination was required; (*f*) whether the applicant was rejected; (*g*) whether a certificate of registration was granted; (*h*) the date of the action of the board; and (*i*) such other information as may be deemed necessary by the board. Such register shall be open to public inspection.

The records of the board shall be prima facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under the seal of the board, shall be admissible in evidence with the same force and effect as if the original were produced.

The board shall make an annual report to the governor, which shall include an itemized statement of all receipts and expenses of the board for the year.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C.

§ 81*I*. Roster of registered professional engineers and land surveyors

A roster showing the names and places of business of all registered professional engineers and all registered land surveyors shall be prepared by the secretary of the board during the month of July of each year, commencing in nineteen hundred and forty-two. Copies of such roster shall be mailed to each person so registered, placed on file with the state secretary and furnished to the public upon request.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C.

§ 81J. Qualifications for registration as professional engineer or land surveyor; examinations; certification

The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for registration as a professional engineer or land surveyor, respectively, to wit:

(1) As a professional engineer:

(*a*) A person holding a certificate or registration to engage in the practice of engineering, issued to him by a proper authority of a state, commonwealth, territory, or possession of the United States, the District of Columbia, or any foreign country, who, in the opinion of the board, meets the requirements of this chapter, based on verified evidence may, upon application, be registered without further examination.

A person holding a certificate of qualification issued by the National Council of Engineering Examiners, whose qualifications meet the requirements of this chapter, may, upon application, be registered without further examination.

(*b*) A graduate of an engineering curriculum of four years or more approved by the board as being of satisfactory standing; and with a specific record of an additional four years or more of experience in engineering work of a grade and character which indicates to the board that the applicant may be competent to practice engineering, and who passes or has passed the required written examination in the fundamentals of engineering, and the required written examination in the principles and practice of engineering. The board may require that the above experience in engineering work be completed prior to admission to the examination in the principles and practice of engineering. Should the board permit the examination to be taken at an earlier date, then the applicant may be required to pass an oral examination as determined by the board. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in the commonwealth, provided he is otherwise qualified.

(*c*) An applicant, having satisfactorily completed a four-year college curriculum in engineering or in related science other than the ones approved by the board and eight years or more of progressive experience in engineering work of a character and grade which indicates to the board that the applicant may be competent to practice engineering, and who passes or has passed the required written examination in the fundamentals of engineering designed to show knowledge and skill approximating that obtained through graduation in an approved four-year engineering curriculum, and the required written examination in the principles and practice of engineering, shall be granted a certificate of registration to practice engineering in the commonwealth, provided he is otherwise qualified; provided, however, where an applicant is permitted by the board to be admitted to the examination in the principles and practice of engineering prior to completion of the above experience, the board may require that the applicant pass an oral examination as determined by the board before issuing a certificate of registration.

(*d*) An applicant having completed twelve years or more of progressive experience in engineering work of a character and grade, including five years or more in responsible charge of engineering work, which indicates to the board that the applicant may be competent to practice engineering, and who passes or has passed the required written examination in the fundamentals of engineering designed to show basic engineering knowledge and skill and the required written examination in the principles and practice of engineering and an oral examination when required by the board may be granted a certificate of registration to practice engineering in the commonwealth, provided he is otherwise qualified.

(*e*) An applicant, with a specific record of at least twenty years of lawful practice in engineering work, of which at least ten years have been in responsible charge of important engineering work, and of a grade and character which indicates to the board that the applicant may be competent to practice engineering and who has passed an oral or written examination in the principles and practice of engineering, and is otherwise qualified, shall be registered to practice engineering in the commonwealth.

(*f*) Undergraduate study in an engineering curriculum approved by the board as being of satisfactory standing may be considered as engineering experience on an equivalent full-time basis up to a maximum of three years in computing the number of years of experience in engineering work in clauses (*d*) and (*e*) of this subsection.

(*g*) Engineering teaching in a college or university offering an approved engineering curriculum of four years or more may be considered as engineering experience.

(2) As a land surveyor:

(*a*) A person holding a bachelor of science degree in an approved curriculum and presenting evidence satisfactory to the board that, in addition thereto, he has had at least four years of combined office and field experience in land surveying with a minimum of three years' experience in responsible charge of land surveying projects under the supervision of a registered land surveyor and who has passed the oral and written examinations as required by the board.

(*b*) A person holding two years of formal education in an approved curriculum above high school level with at least sixty semester credit hours passed or equivalent quarter-hours, or the equivalent approved by the board, and presenting evidence satisfactory to the board that in addition thereto he has had at least six years of combined office and field experience in land surveying with a minimum of four years' experience in responsible charge of land surveying projects under the supervision of a registered land surveyor and who has passed the oral and written examinations as required by the board.

(*c*) A person who has a specific record of twelve years or more of lawful practice in surveying work of a character satisfactory to the board and who passes the required written examinations, which shall include questions on laws, procedures and practices pertaining to practices in the commonwealth, and passes an oral examination at the discretion of the board may be granted a certificate of registration to practice surveying provided he is otherwise qualified.

(*d*) A person holding a certificate of registration to engage in the practice of land surveying issued on comparable qualifications from a state, commonwealth, territory, or possession of the United States, will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to determine his qualifications, but in any event he shall be required to pass the required written examination of not less than four hours' duration, which shall include questions on laws, procedures and practices pertaining to practice in the commonwealth.

(*e*) Undergraduate study in a surveying curriculum approved by the board as being of satisfactory standing may be considered as surveying experience on an equivalent full-time basis up to a maximum of two years in computing the number of years of experience in surveying work in clauses (*b*) and (*c*) of this subsection.

(*f*) A person, with a record of at least twenty years of lawful practice in land surveying work, of which at least ten years he has been responsible for major land surveying work, of a grade and character which indicates to the board that the person may be competent to practice land surveying and who has passed an oral or written examination in the principles and practice of land surveying, and is otherwise qualified, shall be registered to practice land surveying in the commonwealth.

(3) The board shall certify persons who have passed written or oral examinations and shall specify the nature and type of the examination passed in such certification.

The board may certify persons who have passed appropriate examinations and who have education and/or experience qualifications satisfactory to the board as follows:

(*a*) A graduate of an approved engineering curriculum of four years or more who has passed the board's eight-hour written examination in the fundamentals of engineering shall be certified or enrolled as an engineer-in-training, if he is otherwise qualified.

(*b*) An applicant having satisfactorily completed a four-year college curriculum in engineering or in related science other than the ones approved by the board and a specific record of four or more years of experience in engineering work of grade and character satisfactory to the board, who passes the board's eight-hour written examination in the fundamentals of engineering shall be certified or enrolled as an engineer-in-training, if he is otherwise qualified.

(*c*) A graduate of an approved land surveying curriculum of four years or more who has had in addition thereto at least two years of combined office and field experience in land surveying, with a minimum of one year in responsible charge of land surveying procedures under the supervision of a registered land surveyor, and who has passed the written examinations required by the board shall be certified or enrolled as a land surveyor-in-training, if he is otherwise qualified.

(*d*) An applicant having at least two years of formal education in an approved curriculum above high school level with at least sixty semester credit hours passed, or equivalent quarter-hours, or the equivalent approved by the board, and who presents evidence satisfactory to the board that in addition thereto he has had at least four years of combined office and field experience in land surveying with a minimum of two years in responsible charge of land surveying projects under the supervision of a registered land surveyor, and who has passed the written examinations required by the board shall be certified or enrolled as a land surveyor-in-training, if he is otherwise qualified.

(*e*) All of the examinations above required may be taken during the period of formal education or subsequently either prior to or following completion of the required experience. Upon completion of required experience, the board shall then certify the applicant as an engineer-in-training or a land surveyor-in-training.

No person shall be eligible for registration as a professional engineer or land surveyor or for certification as having satisfactorily completed an oral or written examination who is not of good character and reputation.

The board shall determine the duration, date, place and content of all written examinations. Registered engineers or land surveyors may take examinations required for registration hereunder without prejudice to their present registrations.

The execution, as a contractor, of work designed by a professional engineer, or the supervision of the construction of such work as a foreman or superintendent shall not be deemed to be the practice of engineering.

The fact that an applicant for registration by the board is not at the time of application practicing his profession shall not of itself make him ineligible for such registration.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 4; St.1966, c. 76, §§ 1, 2; St.1970, c. 707, § 5; St.1979, c. 687.

§ 81K. Form and content of application for registration; fees

Applications for registration shall be on forms prescribed and furnished by the board, shall contain statements made under oath, showing the applicant's education and detailed summary of his technical work, and shall contain not less than five references. For engineering applicants, three or more shall be professional engineers having personal knowledge of the applicant's engineering experience, and for surveying applicants, three or more shall be registered land surveyors having personal knowledge of the applicant's surveying experience.

The registration fee for professional engineers shall be forty dollars, which shall accompany the application. The registration fee for land surveyors shall be thirty dollars, which shall accompany the application. In addition there shall be a fee of fifteen dollars for each four hour written examination and a fee of thirty dollars for each eight hour written examination, which fees shall accompany the application for such examination.

If in the opinion of the board any applicant is ineligible to receive a certificate of registration no part of the fee accompanying his application shall be refunded to him.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 5; St.1970, c. 707, § 6; St.1972, c. 684, § 40; St.1975, c. 588, § 2.

§ 81L. Time and place of examination; scope; methods of procedure; re-examinations

When oral or written examinations are required they shall be held at such time and place as the board shall determine. If examinations are required on fundamental engineering subjects, such as are ordinarily given in college curricula, the applicant shall be permitted to take part of the professional examination prior to his completion of the requisite years of experience in engineering work.

The scope of the examinations and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability to design and supervise engineering works so as to insure the safety of life, health and property. Examinations for the purpose of determining the qualifications of applicants for registration in professional engineering and in land surveying shall be given separately. A candidate failing on his first examination, upon application therefor not less than six months thereafter, shall be entitled to be reexamined upon payment of the appropriate registration fee required by section eighty-one K. Upon request by any applicant who is rejected the board shall furnish him with the reasons for his rejection.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 6; St.1970, c. 707, § 7; St.1975, c. 588, §§ 3, 3A.

§ 81M. Certificate of registration; prima facie evidence; seal of registrant

The board shall issue a certificate of registration upon payment of the registration fee to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of said sections. In the case of a registered professional engineer, the certificate shall authorize the practice of engineering. In the case of a registered land surveyor, the certificate shall authorize the practice of land surveying. Certificates of registration shall show the full name of the registrant, shall have a serial number and be under seal of the board.

The issuance of a certificate of registration by the board shall be prima facie evidence that the person named therein is entitled to all the rights and privileges of a registered professional engineer or of a registered land surveyor, as the case may be, while such certificate remains unrevoked or unexpired.

Each registrant hereunder shall, upon registration, obtain a seal of the design authorized by the board, bearing the registrant's name and the legend "Registered Professional Engineer" or "Registered Land Surveyor". Plans, specifications, plats and reports prepared by a registrant shall be stamped with the said seal when filed with public authorities, while the registrant's certificate is in force, but it shall be unlawful for anyone to stamp or seal any documents with said seal after the certificate of the registrant named thereon has expired or has been revoked, unless said certificate shall have been renewed or re-issued.

Plans, specifications, plats and reports whenever stamped with the seal of a registered professional engineer or land surveyor shall be signed by the registrant named thereon. The use of a facsimile signature stamp shall not be deemed to comply with this section.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 7; St.1970, c. 707, § 9.

§ 81N. Expiration of certificates; notice; renewal; fee; reinstatement

Certificates of registration shall expire June thirtieth in every even-numbered year, and may be renewed as hereinafter provided. The secretary of the board shall, at least one month in advance of the expiration date of such certificate, notify the registrant of such expiration date and of the fee required for the renewal of the certificate for the succeeding two-year period, and any such certificate may be renewed on or prior to the expiration date or at any time prior to August first following such expiration date upon the payment of a fee of fifteen dollars. If a registrant fails to renew his certificate prior to said August first, such certificate may thereafter be renewed within two years of its expiration date upon the payment of a fee of twenty dollars. If a registrant fails to renew his certificate within two years of the expiration date, he shall be temporarily dropped from the roster of registered professional engineers, or of registered land surveyors, subject to reinstatement as hereinafter provided. Written notice shall be given to the registrant by the secretary of the board one month in advance of such dropping from said roster. A registrant, who has been temporarily dropped from said roster, may be reinstated upon the payment of a fee of thirty dollars and upon the filing of an application for reinstatement together with evidence satisfactory to the board that nothing has occurred during the time he was dropped from said roster which would justify the revocation of his certificate under the provisions of section eighty-one P. A registrant so reinstated shall, without the payment of an additional fee, be issued a certificate of registration.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1960, c. 472, § 1; St.1970, c. 707, § 10; St.1972, c. 684, §§ 41, 42; St.1975, c. 588, § 4.

§ 81P. Reprimand and suspension of registration; revocation; charges; hearing

The board shall have the authority to reprimand a registrant and to suspend the registration of a registrant for a limited period to be specified in such suspension order for any fraud, deceit, gross negligence, incompetence, misconduct or any crime involving moral turpitude in the practice of engineering or land surveying.

The board may revoke the certificate of registration of any registrant who is found guilty of:

(*a*) The practice of any fraud or deceit in obtaining a certificate of registration; or

(*b*) Any gross negligence, incompetency or misconduct in the practice of professional engineering or land surveying as a registered professional engineer or as a registered land surveyor; or

(*c*) The affixing of his signature to plans, drawings, specifications or other instruments of service which have not been prepared by him or in his office, or under his immediate and responsible direction, or permitting his name to be used for the purpose of assisting any person, not a registered professional engineer or registered land surveyor, to evade the provisions of this chapter.

Any person may prefer charges of fraud, deceit, gross negligence, incompetency or misconduct against any registrant. Such charges shall be in writing, shall be sworn to by the person making them and shall be filed with the secretary of the board.

The board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance, and may require the production of books, papers and documents in any case involving the revocation of registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person refuses to obey any subpoena so issued, or refuses to testify or produce such books, papers and documents, the board may present a petition to the superior court, setting forth the facts, and thereupon the superior court shall, after a hearing and in its discretion, order such person to appear before said board and to testify or to produce such books, papers and documents as may be deemed necessary and pertinent. Any person failing or refusing to obey the order of said court may be proceeded against in the same manner as for refusal to obey any other order of said court.

All charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three months after the date on which they shall have been preferred. The time and place for said hearing shall be fixed by the board, and a copy of the charges, together with a notice of the time and place of hearing, shall be personally served on, or mailed to the last known address of, such registrant at least thirty days before the date fixed for the hearing. At any hearing the accused registrant shall have the right to appear personally and by counsel, to cross-examine witnesses appearing against him, and to produce evidence and witnesses in his own defence. If, after such hearing, three or more members of the board vote in favor of finding the accused guilty, the board shall revoke the certificate of registration of such registered professional engineer or registered land surveyor.

Added by St.1941, c. 643, § 2. Renumbered from § 81M by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 8; St.1970, c. 707, § 12; St.1971, c. 282, § 2.

§ 81Q. Reissuance of certificate after revocation; duplicate certificates; fee

The board, for any reason which it may deem sufficient, may reissue a certificate of registration to any person whose certificate has been revoked, if three or more members of the board vote in favor of such reissuance. A new certificate of registration, to replace any certificate revoked, lost, destroyed or mutilated, may be issued, subject to the rules of the board, and a charge of five dollars shall be made for such issuance.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1975, c. 588, § 5.

§ 81R. Construction

Nothing in said sections shall be construed to prevent or to affect:—

(*a*) the practice of any other legally recognized profession including the practice of architecture as defined in this chapter and the practice of any trade, including, in connection with the practice of the electrical, plumbing, heating, ventilating, air conditioning, refrigeration and all other trades, the preparation of plans, specifications or shop drawings by any person, firm, partnership, corporation or association practicing any such trade, for work to be installed or being installed by the same person, firm, partnership, corporation or association preparing such plans, specifications or shop drawings;

(*b*) a person not a resident of and having no established place of business in the commonwealth from practicing or offering to practice therein the profession of engineering or land surveying, when such practice does not exceed in the aggregate more than thirty days in any calendar year; provided, such person is legally qualified by registration to practice the said profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in said sections;

(*c*) a person not a resident of and having no established place of business in the commonwealth or who has recently become a resident thereof, from practicing or offering to practice engineering or land surveying therein for more than thirty days in any calendar year, if he shall have filed with the board an application for a certificate of registration and shall have paid the fee required by said sections; provided, that such person is legally qualified by registration to practice engineering or land surveying in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in said sections. Such practice shall continue only for such time as the board requires for the consideration of the application for registration;

(*d*) the work of an employee or a subordinate of a person holding a certificate of registration under said sections, an employee of a person practicing lawfully under clause (*b*) or (*c*) of this section, or an employee of a firm, co-partnership, corporation or joint stock association engaging lawfully under clause (*f*) of this section; provided, such work does not include final designs or decisions and is done under the direct responsibility, checking and supervision of a person holding a certificate of registration under said sections or a person practicing lawfully under clause (*b*) or (*c*) of this section;

(*e*) the practice of officers and employees of the government of the United States while engaged within the commonwealth in the practice of engineering or land surveying for said government;

(*f*) the practice of engineering or land surveying in the commonwealth by a firm, co-partnership, corporation or joint stock association; provided, that the person in charge of such practice by such firm, co-partnership, corporation or joint stock association is a professional engineer or land surveyor, holding a certificate of registration under said sections;

(*g*) the performance of engineering work or services by employees of a corporation engaged in manufacturing, research or development operations, which work or services are performed in connection with the research or development activities of, or the manufacture, sale, installation, maintenance, repair or service of the products of, such corporation, or of its parents, affiliates or subsidiaries; provided, that such research or development activities which are not related to the manufacture, sale, installation, maintenance, repair or service of the products of such corporation, or of its parents, affiliates or subsidiaries, are not primarily in connection with the construction of fixed works which are to be made available for use by the general public;

(*h*) the practice of landscape architects, city planners and regional planners, in so far as their work consists in the consultations and preparation of master plans of parks, land areas, sites, organized groups of buildings or communities, or the preparation of detailed plans and the supervision of planting, grading, paving, and such structural features as fences, steps, walls, minor pools, garden structures and minor utilities normally included as part of their work;

(*i*) sales personnel from recommending applications to specific uses of products for which they act as sales representatives;

(*j*) the performance of engineering work or services by any person employed by an insurance company or by its agents, its affiliates or subsidiaries, or the performance of engineering work or services for insurance inspection and actuarial bureaus, provided such work or services in either case are incidental to the operation of an insurance company;

(*k*) the work of an owner or managing agent of a building or any employee of such owner or agent making alterations or repairs to such building or supervising the same, or of a person engaged by such owner or agent to perform work of any other legally recognized trade exempted under clause (*a*) of this section;

(*l*) the performance of engineering work and services by a person, firm or corporation subject to the jurisdiction of the department of public utilities which work and services are performed as part of their employment and for the benefit of such person, firm, or corporation; or

(*m*) the performance of engineering work and services by employees of the Metropolitan Transit Authority which work and services are performed as part of their employment and for the benefit of the said authority.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 9.

§ 81S. Appeal from action of board

Any person aggrieved by any action of the board refusing to grant, or suspending or revoking, a certificate of registration or a permit for any cause, may, within fifteen days following notification by the board of such action, appeal to the superior court of the county wherein he resides, and, after hearing, said court shall make such decree, sustaining or reversing in whole or in part the decree of the board, as it deems proper, and its decision shall be final.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C.

§ 81T. Penalties; duties of attorney general

Whoever practices or offers to practice engineering or land surveying in the commonwealth without being registered in accordance with the provisions of this chapter, or presents or attempts to use as his own the certificate of registration or the seal of another, or gives any false or forged evidence of any kind to the board or to any member thereof in obtaining a certificate of registration, or falsely impersonates any registrant, or attempts to use an expired or revoked certificate of registration, or violates any of the provisions of sections eighty-one D to eighty-one S, inclusive, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in a jail or house of correction for a period not exceeding three months, or both.

It shall be the duty of the attorney general or the district attorney for the district in which the alleged violation was committed to enforce the provisions of this section and sections eighty-one D to eighty-one S, inclusive, and to prosecute any person violating the same. The attorney general or his assistant shall act as legal advisor of the board and render such legal assistance as may be necessary in carrying out the provisions of said sections.

Added by St.1941, c. 643, § 2. Renumbered by St.1941, c. 722, § 9C. Amended by St.1958, c. 584, § 10.

REGISTRATION OF EMBALMERS AND FUNERAL DIRECTORS

§ 82. Definitions

The following words, as used in this section and in sections eighty-three to eighty-seven, inclusive, shall have the following meanings, unless the context otherwise requires:—

"Board", the board of registration in embalming and funeral directing established by section twenty-nine of chapter thirteen.

"Person", an individual, but not a partnership, corporation or association of any kind.

"Embalming", the business, practice, science or profession, as commonly practiced, of preserving, disinfecting and preparing in any manner dead human bodies for burial, cremation or transportation.

"Funeral directing", the business, practice or profession, as commonly practiced, of (*a*) directing or supervising funerals or providing funeral service; (*b*) handling or encasing, or providing services for handling or encasing, dead human bodies, and preparation of dead human bodies, otherwise than by embalming, for burial or disposal; (*c*) providing embalming services; (*d*) providing transportation, interment and disinterment of dead human bodies; and (*e*) maintaining an establishment so located, constructed and equipped as to permit the decent and sanitary handling of dead human bodies with suitable equipment in such establishment for such handling.

"Embalmer", any person engaged, or holding himself out as engaged, in the business, practice, science or profession of embalming, whether on his own behalf or in the employ of a registered and licensed funeral director.

"Funeral Director", any person engaged, or holding himself out as engaged, in the business, practice or profession of funeral directing.

"Apprentice embalmer", any person engaged in the learning of the practice of embalming under the instruction and personal supervision of a duly registered embalmer; provided, that no person shall serve as such apprentice embalmer until he has been certified as such by the board.

Amended by St.1936, c. 407, § 3; St.1939, c. 160, § 1; St.1945, c. 596, § 1; St.1954, c. 653, § 2.

§ 83. Registration of embalmers, funeral directors and apprentice embalmers; applications; examinations and re-examinations; certificates; fees; renewals; apprenticeship; advertising; funeral directing

Applications for registration as embalmers, funeral directors or apprentice embalmers, and for establishment certificates, shall be made on blanks furnished by the board.

No person shall be registered by the board as an embalmer unless he has been found by the board upon examination to be eighteen years of age or over, a resident of this commonwealth, a citizen of the United States, of good moral character; to have successfully completed a four-year high school course or to possess the educational equivalent thereof; to have served as an apprentice embalmer for two years under the personal supervision and instruction of a registered embalmer, during which period he has embalmed not less than fifty dead human bodies, and to have satisfactorily completed a course of instruction of not less than nine months in an embalming school approved by the board. Upon payment of twenty dollars, such person shall be examined by the board, and if found to be qualified, shall be registered and given a certificate thereof signed by the chairman and secretary of the board.

No person shall be registered by the board as a funeral director unless he has been found by the board upon examination to be eighteen years of age or over, a resident of this commonwealth, a citizen of the United States, of good moral character, a duly registered embalmer, unless such person is the widow of a duly registered and licensed funeral director; to have successfully completed a four-year high school course or has attained the practical equivalent of a high school education; to have satisfactorily completed a course of instruction of not less than nine months in a funeral directing school approved by the board or to have included and successfully completed the elements of such a course of instruction in his study schedule at the college or university which he has attended; to be qualified to prepare such death certificates and other documents as are required by the department of public health for the protection of the general public in the ordinary course of his business; to be familiar with the precautions to be taken to prevent the spread of communicable diseases as prescribed by the department of public health for the protection of the general public welfare; and to be conversant with the laws of the United States and of this commonwealth relative to (*a*) the custody of dead human bodies; (*b*) the preparation of such bodies for burial, cremation and shipment, as prescribed by the department of public health for the sanitary handling of dead human bodies by common carriers for the protection of public health; and (*c*) the cremation, burial and shipment of such bodies as prescribed by the department of public health for sanitary handling of dead human bodies by common carriers for the protection of public health.

Upon payment of twenty dollars, such person shall be examined by the board. If such person is found to be qualified, such person shall be registered by the board as qualified to be licensed under section forty-nine of chapter one hundred and fourteen as a funeral director, and he shall receive a certificate of registration signed by the chairman and the secretary of the board; provided, that he shall not be so licensed until he furnishes satisfactory proof to the board that he will maintain within the commonwealth a funeral directing establishment so located, constructed and equipped as to permit the sanitary handling of dead human bodies.

Applicants for registration as embalmers or as funeral directors may, upon the payment of ten dollars, be re-examined at any subsequent examination conducted by the board.

Any person desiring to become an apprentice embalmer shall make application on a form provided for the purpose, and must appear before the board for approval of his application. The application shall state that the applicant is a citizen of the United States, of good moral character, and holds a high school diploma or its equivalent. Said application must be accompanied by a fee of ten dollars. When the board is satisfied as to his qualifications, it shall issue a certificate of embalmer apprenticeship. Such apprenticeship shall be served in the establishment of a registered funeral director, on a full-time employment basis. When such apprentice enters the employ of a person so registered, he shall immediately notify the member of the board in his district of the name and place of business of the person whose service he has entered. If such apprentice thereafter leaves the employ of such person whose service he has entered, it shall be the duty of said person to give such apprentice an affidavit showing the length of time he has served with him, which affidavit shall be filed with the board. The number of apprentice embalmers allowed to be registered under any one registered embalmer or funeral director shall be determined by the board on the basis of one apprentice embalmer for each fifty cases or any part thereof that the registered embalmer or funeral director had cared for professionally in the previous calendar year. No person shall be employed as an apprentice except in accordance with the foregoing provisions.

No apprentice or embalmer shall advertise or publish in any manner the fact of his registration, nor shall any funeral director advertise or publish in any manner whatsoever the name or names of apprentices or any persons associated with him in the profession of funeral directing unless the said person or persons are registered and licensed funeral directors.

The profession of funeral directing shall be conducted or practiced at a fixed place or establishment, and no person, partnership, corporation, association or other organization shall open or maintain a place or establishment at which to practice such profession unless an establishment certificate has been granted by said board. Such certificate shall be for one location only; provided, that this shall not prevent a registered funeral director from conducting a funeral in another licensed establishment, nor from a church, nor from a private residence from which funeral services are not regularly conducted, a public lodge or hall room, providing such person maintains a fixed place or establishment of his own conforming to the above requirements. The board shall issue a certificate for said establishment after application has been made on a form provided for the purpose, and when the same meets the requirements set forth in the rules and regulations of the board and established by the rules and regulations of the department of public health and local boards of health. Said application shall be accompanied by a fee of five dollars.

No establishment or branch thereof for the preparation, disposition and care of dead human bodies shall be opened or maintained unless duly registered by the board. No establishment or branch shall be moved without obtaining a new certificate from the board. Applications for such transfers shall be made upon blanks furnished by the board and shall be accompanied by a fee of ten dollars. An establishment's certificate shall remain in force indefinitely unless revoked by the board or until there has been a change in the ownership of the establishment, which shall automatically cancel said certificate.

Amended by St.1936, c. 407, § 3; St.1939, c. 160, § 4; St.1945, c. 596, § 2; St.1948, c. 491; St.1954, c. 653, § 2; St.1956, c. 295; St.1972, c. 684, §§ 43 to 48; St.1973, c. 925, §§ 24, 25.

§ 84. Issuance and renewal of certificates; fees; expiration of registration; refusal to issue or renew; suspension or revocation

No certificate, except an establishment certificate, shall be issued or renewed for a period exceeding one year, and all renewals thereof, except embalmer apprentice certificates which shall be issued on an annual basis, shall expire and terminate the first day of November following the date of their issue, unless sooner revoked and cancelled.

Any person holding a registration certificate issued under the provisions of section eighty-three may have the same renewed by making and filing with the board an application therefor within thirty days preceding the expiration of his certificate upon blanks provided by said board, and upon payment of renewal fees of ten dollars for each embalmer's certificate, twenty dollars for each funeral director's certificate, and ten dollars for each apprentice embalmer's certificate; provided, that any person neglecting or failing to have his embalmer's or funeral director's certificate so renewed, may have the same renewed by making application therefor during the twenty days following the expiration date, and upon the payment of a revival fee of twenty dollars in addition to the renewal fee.

If no application for renewal or for revival of a funeral director's or embalmer's certificate is made within said twenty days, the holder thereof may within one year of the original date of expiration of the certificate apply for renewal of the same upon the payment to the board of a penalty at the rate of one dollar each week beyond the date of said twenty-day revival period. If at the expiration of one year no application for renewal has been made, the board will remove the former registrant's name from its books. If such former registrant, after the expiration of the one year, applies for registration, he shall be subject to payment of the accrued penalties, and shall be required to meet the provisions of section eighty-three relative to original registration.

The board may refuse to issue or to renew, or may suspend or revoke any certificate, or may place the holder thereof on a term of probation after due public hearing upon finding the holder of such certificate to be guilty of a crime involving moral turpitude, or of unprofessional conduct, which is hereby defined to include (*a*) misrepresentation or fraud in the conduct of the profession of the registrant; (*b*) false or misleading or "bait" advertising, so called, as a funeral director advertising or using the name of an unregistered person in connection with that of any funeral establishment; (*c*) soliciting for dead human bodies by the registrant, his agents, assistants or employees, or any person acting on his behalf with his knowledge and consent, express or implied, whether such soliciting occurs after death or while death is impending; provided, that this shall not be deemed to prohibit general advertising; (*d*) employment by a registered person of persons known as cappers, or steerers or solicitors, or other such persons to obtain funeral directing or embalming; (*e*) gross immortality; (*f*) the aiding or abetting of an unregistered person to practice funeral directing or embalming; (*g*) the use of profane, indecent or obscene language in the presence of a dead human body, or within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of; (*h*) solicitation or acceptance by a registered person of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery; (*i*) the holding or keeping for resale of any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body; (*j*) violation of any of the provisions of sections eighty-three to eighty-seven, inclusive, or any rule or rules of the board; (*k*) violation of any state or municipal law or ordinance affecting the handling, custody, care or transportation of dead human bodies; (*l*) fraud or misrepresentation in obtaining a certificate; (*m*) the recommending to the board of an applicant for a certificate who has not, to his personal knowledge, complied with the requirements of sections eighty-three to eighty-seven, inclusive, or with the rules and regulations of the board; (*n*) the refusal to surrender promptly the custody of a dead human body, upon the express order of the person lawfully entitled thereto; and (*o*) failure to secure a permit for the removal or burial of a dead human body prior to interment or disposal.

Amended by St.1936, c. 407, § 3; St.1954, c. 653, § 2; St.1972, c. 684, § 49; St.1978, c. 508, § 6.

§ 84A. Violations; investigation by board; hearing; notice; review of decision

Whenever the board shall have reason to believe that any person or establishment to whom a certificate has been issued to practice or operate under section eighty-three, as the case may be, has violated any of the provisions of sections eighty-three to eighty-seven, inclusive, or any rule or regulation prescribed, or whenever written complaint, charging any registered person with the violation of any provision of the said sections is filed with the board, it shall conduct an investigation, and if from such investigation it shall appear that there is reasonable ground for belief that the accused may have been guilty of the violations charged, the board shall set a time and place for a public hearing to determine whether or not the certificate shall be revoked or suspended. Any member of the board shall have the right to administer oaths to witnesses.

No action to suspend, revoke or cancel any certificate shall be taken by the board until the accused or his counsel has been furnished with a statement of the charges against him, or it, and a notice of the time and place of hearing thereof; the furnishing of the charges and such notice to be given said accused at least fifteen days prior to the date of hearing. The accused may be represented at such hearing by counsel. If upon such hearing the board finds the charges to be true, it may revoke or suspend the certificate of the accused.

Any person or establishment aggrieved by the decision of the board to revoke or suspend his or its certificate may, within ten days after such action, bring a petition in the district court within the judicial district of which he resides, hereinafter called the court addressed to the justice of the court, praying that the action of the board may be reviewed by the court. The bringing of such a petition within such period shall operate to continue the registration in full force and effect pending the decision of the court. After such notice to the board as the court deems necessary, it shall review such action, hear the witnesses, and shall affirm the decision of the board unless it shall appear that it was made without proper cause or in bad faith, in which case the decision of the board shall be reversed. The court shall hear such petition within thirty days after the bringing thereof. The appeal from the decision of the board provided by this section is in the alternative to that provided by section sixty-four, and a decision of the court upon a petition brought under this section shall be final and conclusive.

Added by St.1954, c. 653, § 2.

§ 84B. Itemized list of funeral costs

Every licensed funeral director, his agent or servant, shall give, or cause to be given to the person making funeral arrangements, or arranging for shipment, transportation or other disposition of a deceased person, at the time such arrangements are completed or prior to the time of rendering the service, a written itemized statement showing to the extent then known the price of merchandise and service that such person making such arrangements has selected; the price of supplemental items of service and merchandise if any; the estimated amount of each item for which the funeral service firm will advance monies as an accommodation to the person making such funeral arrangements. No such funeral director, his agent or servant, shall bill or cause to be billed, any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral director, is the same amount as is billed to such funeral director.

Added by St.1978, c. 340.

§ 85. Rules and regulations; enforcement; records; inspection; annual reports; investigations; lists

The board is authorized to adopt and promulgate such rules and regulations for the transaction of its business and the betterment and promotion of the standards of service and practice to be followed in the profession of embalming and funeral directing, as it may deem expedient and consistent with the laws of the commonwealth; to employ inspectors who shall investigate and report to the board the results of their investigations; to employ such other employees as the work of the board may require; to keep a record in which shall be registered the name and business address of every person and establishment to whom certificates have been granted under section eighty-three, the number and date of such certificate, and the date of each renewal thereof; to inspect the premises in which funeral directing is conducted or where embalming is practiced or where an applicant proposes to practice; to adopt such rules, regulations and classifications as may be reasonable and proper; to define what shall be deemed the proper construction, drainage and ventilation, and what instruments are necessary and suitable in a preparation room and in a funeral establishment. Said board shall be responsible for the enforcement of the provisions of sections eighty-three to eighty-seven, inclusive. The board shall hold examinations for applicants for registration at such times and places and in such manner as it shall determine. The board shall keep a record of all moneys received and disbursed by it, and a duplicate thereof shall always be open to public inspection in the office of the state secretary. It shall make an annual report showing the condition of embalming and of funeral directing in the commonwealth. It shall investigate all complaints of violations of the provisions of sections eighty-three to eighty-seven, inclusive, and, if necessary, bring such violations to the notice of the proper prosecuting officers. A certified list of all funeral directors registered by the board shall be sent by the board, annually before May 1, to the board of health of the several cities and towns of the commonwealth.

Amended by St.1936, c. 407, § 3; St.1941, c. 232; St.1954, c. 653, § 2.

§ 85A. Reciprocal agreements with other states

The board may, upon the affirmative vote of a majority of its members, enter into and rescind at any time an agreement with the corresponding licensing authority of any other state competent to enter into such an agreement, which agreement shall be in substantially the following form:

> We the undersigned representatives of ( ), insert names of signatory states by and through their respective licensing authorities, hereby jointly agree that a person duly registered and licensed as a funeral director, or embalmer in either one of the above named states may go into said other state for the purpose of handling, embalming, transporting and burying dead human bodies and directing funerals as though he were registered under the laws of that state, except that he shall not maintain an establishment, advertise, have any agent or agency or otherwise hold himself out as a funeral director or embalmer other than in the state in which he is licensed.
>
> It is further agreed that the licensing authority of the state in which the funeral director or embalmer is licensed will assume the responsibility for instituting disciplinary action against any licensed funeral director or embalmer who may be guilty of unprofessional conduct in the practice of his business in the other state, when such is called to its attention by the licensing authority of that state.

Added by St.1958, c. 528.

§ 86. Display of certificates

Every holder of a certificate of registration in embalming, every holder of a certificate of registration in funeral directing, and every holder of an establishment certificate shall conspicuously display it in his place of business.

Amended by St.1936, c. 407, § 3; St.1954, c. 653, § 2.

§ 87. Unlawful embalming; engaging in business of funeral directing without registration; penalty

Whoever, not being registered as an embalmer under section eighty-three or corresponding provisions of earlier laws, shall engage in the profession of embalming dead human bodies, or whoever not being registered as a funeral director under section eighty-three and licensed as a funeral director under section forty-nine of chapter one hundred and fourteen shall engage in the business or profession of funeral directing, or shall hold himself out as such, shall, except as otherwise provided by law, be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both; but this shall not be deemed to prohibit the employment of apprentice embalmers serving under the personal supervision of a registered embalmer, or the employment of assistants in funeral directing under the personal supervision of a registered and licensed funeral director, nor shall it be deemed to prohibit a corporation or partnership, if not engaged in any other business, from engaging in the business of funeral directing, if a duly registered and licensed funeral director is in charge of the business of said corporation or partnership and his name is presented to public view and in all advertising. If such corporation or partnership engages in general advertising for the purpose of advertising funeral services, then all the individuals whose names shall appear on such advertisement shall also be duly registered and licensed funeral directors, and all active members of said corporation or partnership, together with those individuals whose names shall appear, or be used in connection with the name of the corporation or partnership in the regular course of its business in the conduct of funerals and for the purpose of advertising funeral services, shall also be duly registered and licensed funeral directors. No person engaged in embalming or funeral directing or serving as an apprentice shall act or be employed as a caretaker or supervisor at any cemetery.

Amended by St.1936, c. 407, § 3; St.1937, c. 13; St.1939, c. 160, § 2; St. 1954, c. 653, § 2.

REGISTRATION OF SANITARIANS

§ 87LL. Definitions

The following words as used in sections eighty-seven MM to eighty-seven *OO*, inclusive, shall, unless the context requires otherwise, have the following meanings:—

"Board", the board of registration of sanitarians established under section fifty-one of chapter thirteen.

"Sanitarian", a person with broad basic education, experience in the physical, biological and social sciences, supplemented by specialization in the field of sanitary sciences and technology, and who is qualified to carry out instructional and inspectional duties and enforce the laws in the field of environmental sanitation.

Added by St.1957, c. 673, § 2.

§ 87MM. Registration of sanitarians; application; certificate; expiration; fee

A person who desires to be registered as a sanitarian shall file with said board an application upon a form to be prescribed and furnished by the board. He shall include in such application, under oath, his qualifications as a sanitarian. Said application shall be accompanied by a registration fee of fifteen dollars.

If the board deems the educational qualifications of the applicant are satisfactory and if he passes an examination, both written and oral, satisfactory to the board the board shall issue him a certificate of registration. Such certificate of registration shall expire at the end of the calendar year, and may be renewed on or before January fifteenth of the following year. The fee for renewal of a certificate of registration shall be five dollars.

Added by St.1957, c. 673, § 2.

§ 87NN. Qualifications of applicants; temporary certificates of registration; examinations

The board may by rule establish the minimum educational and experience qualifications which applicants must possess before being allowed to take the examinations for registration as sanitarians, and may, in like manner, provide for the issuance of temporary certificates of registration pending an examination to applicants who appear to be qualified and may, in like manner, provide for the issuance of certificates of registration without examination to persons holding certificates of registration or licenses as sanitarians under the laws of another state.

Added by St.1957, c. 673, § 2.

§ 87*OO*. Titles; Registered Sanitarian; letters R.S.; use

Any person to whom a certificate of registration as a sanitarian has been issued shall have the right to use after his name the title "Registered Sanitarian" or the letters "R.S.". No other person shall assume such title or use such letters or any other words, letters, or writing to indicate that he is a registered sanitarian.

Added by St.1957, c. 673, § 2.

REGISTRATION OF ELECTROLOGISTS

§ 87EEE. Definitions

For the purposes of sections eighty-seven FFF to eighty-seven *OOO*, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

"Board", the board of registration of electrologists established under section fifty-eight of chapter thirteen.

"Electrolysis", the method of removing hair from the human body by the application of an electrical current to the hair-papilla by means of a needle or any other instrument or device to cause decomposition, coagulation or dehydration of the hair-papilla and thus permanently remove the hair.

Added by St.1958, c. 625, § 2. Amended by St.1976, c. 154.

§ 87FFF. Practice of electrolysis; license; penalties

No person shall engage in the practice of electrolysis or hold himself out as a practitioner of, or being able to practice, electrolysis unless he is duly licensed by the board or is a qualified physician registered under the laws of the commonwealth. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1958, c. 625, § 2.

§ 87GGG. Application for registration; qualifications; examinations; fees; renewal of license

Any person desiring to engage in the practice of electrolysis shall make application upon a form furnished by the board, which application shall be signed and sworn to by the applicant. Each application shall be accompanied by a fee of twenty-five dollars. Each applicant who shall furnish the board with satisfactory proof that he is eighteen years of age or over, of good moral character and a citizen of the United States or has filed a declaration of intention to become a citizen of the United States and that he possesses (1) the education qualifications required for graduation from an accredited high school, (2) a certificate or diploma of graduation from an electrolysis school licensed under section eighty-seven LLL, or a certificate or diploma from an electrolysis school in any other state or foreign country, which state or foreign country has standards equivalent to those required for licensing schools under section eighty-seven LLL, and (3) a basic knowledge of histology, bacteriology and sterilization, electricity, hair structure, dermatology, physiology, hygiene and equipment necessary for the practice of electrolysis, shall be examined by the board, by a written and practical examination only, the results of said examination to be made known to each applicant within six weeks after the date of the examination, and, if he passes such examination, shall be licensed as a qualified electrologist and granted a certificate signed by the chairman and secretary of the board in testimony thereof. Such license shall be valid until August first of the next odd year and may be renewed for a two year period upon application therefor on blank forms to be furnished by the board. The fee for each such renewal shall be thirty dollars.

Any person who has been licensed as a qualified electrologist or a qualified instructor, or any person to whom a license to conduct a school of electrolysis has been issued, who fails to renew such license upon its expiry date, may renew the same upon application therefor and payment of the regular renewal fee at any time within two years after said expiry date; if he fails to renew his license prior to the expiration of said two-year period, he shall be required to register as for an original license, take the required examination and pay the appropriate fee.

The board shall conduct examinations of applicants desiring to engage in the practice of electrolysis semiannually in the months of March and September.

Added by St.1958, c. 625, § 2. Amended by St.1964, c. 518, § 1; St.1969, c. 166; St.1969, c. 243; St.1970, c. 328; St.1970, c. 416; St.1973, c. 925, § 28.

§ 87HHH. Licenses; recording; display; place of business

Every person to whom a license has been issued under section eighty-seven GGG shall cause the same to be recorded in the office of the clerk of the town where he principally practices electrolysis, and if he moves his principal office he shall, before engaging in practice at a new address, notify the board in writing of the place where he is to engage in practice. If such removal is to another town, he shall obtain from the clerk of the town where his license is recorded a certified copy thereof and file it with the clerk of such other town. The fee for recording such license or certified copy thereof shall be one dollar.

Every licensed electrologist shall display his license in a conspicuous place in the principal office wherein he practices electrolysis, and shall, whenever required, exhibit it to the board or its authorized representative.

The practice of electrolysis shall be engaged in only in a fixed place or establishment, which place or establishment shall be provided with such instruments, implements and equipment, and subject to such sanitary regulations and inspection, as said board may prescribe.

Nothing in the preceding paragraph, or in any statute, ordinance, provision of law, rule or regulation shall be construed to prohibit the practice of electrolysis and the maintenance of an electrolysis office, in the licensee's home or residence; provided, the licensee complies with the conditions outlined above.

Added by St.1958, c. 625, § 2.

§ 87*III*. Revocation of licenses

The board may suspend or revoke any license issued by it after due public hearing upon finding the holder of such license to be guilty of a crime involving moral turpitude, or of unprofessional conduct, which is hereby defined to include (*a*) misrepresentation or fraud in the conduct of his practice, (*b*) false, fraudulent or misleading advertising, and (*c*) fraud or misrepresentation in obtaining a license. Any electrologist whose license has been suspended or revoked may apply to the board to have the same reissued, and the license shall be reissued upon a satisfactory showing to the board that the cause for dissatisfaction has ceased.

Added by St.1958, c. 625, § 2.

§ 87JJJ. Appeal from revocation of license

Any electrologist aggrieved by any decision or ruling of said board may, within thirty days after receiving in writing notice of such decision or ruling, appeal therefrom to the superior court for the county in which he resides, by filing in the office of the clerk of said court his reasons for appeal, and within seven days thereafter filing a copy thereof with the chairman of said board. The court shall as promptly as may be, after such notice as it may direct, hear and determine said appeal. The decision of said court shall be final.

Added by St.1958, c. 625, § 2.

§ 87KKK. Regulation of advertisement

No licensed electrologist shall include in any advertising, or publish, issue or make any misrepresentation, false, fraudulent or misleading statements through the press, circulation of advertising matter, radio, television, display signs or otherwise.

Added by St.1958, c. 625, § 2. Amended by St.1978, c. 508, § 8.

§ 87LLL. Electrolysis schools; inspection; licensing; standards; revocation of licenses; appeal; licensing of instructors

The board shall, upon the application of any school desiring to teach electrolysis in the commonwealth, inspect such school and notify the governing body thereof in writing if said school is approved by the board, or if not, what action said school must take in order to be licensed by the board. Such application shall be on a form furnished by the board, which application shall be signed and sworn to by the applicant. Each application shall be accompanied by a fee of fifty dollars. Such license shall be valid for a period of two years from its date of issue and may be renewed for a like period upon application therefor on blank forms to be furnished by the board. The fee for each such renewal shall be fifty dollars. The board and the commissioner of public health, acting in an advisory capacity, shall further establish standards to be met by said electrolysis school and shall require the school to maintain the prescribed course of study. When in the opinion of the board such standards have been met by said school, a license of approval shall be awarded to it. No school, not so licensed, may teach electrolysis. Instructors in licensed schools shall be licensed by the board and shall devote their time, exclusively, while on school premises, to teaching the theory and practice of electrolysis. No person may instruct in any electrolysis school in the commonwealth unless he is so licensed; provided, however, that upon application by an electrolysis school a person may lecture in said school on the subject of histology, bacteriology, sterilization, electricity, hair structure, dermatology, physiology, hygiene or equipment necessary for the practice of electrolysis without being so licensed, if, in the opinion of the board, said person is properly qualified in any of the above named subjects and is approved by the board to lecture on a subject in which he is found qualified. Each application shall be made upon a form furnished by the board and shall be accompanied by a fee of five dollars. Such approval by the board shall be valid for two years from the date of issue. If at any time an approved school has, in the opinion of the board, lowered its standards below those established by the board, such license, after notice and hearing, may be revoked by the board. Any applicant aggrieved by the refusal of the board to approve an electrolysis school shall be entitled to have the reasonableness of such refusal reviewed by a justice of the superior court whose decision shall be final.

Any licensed electrologist, desiring to instruct in the practice and theory of electrolysis in a school licensed under this section, shall make application upon a form furnished by the board. Such application shall be signed and sworn to by the applicant, and shall be accompanied by a fee of twenty-five dollars. Each applicant, who shall furnish the board with satisfactory proof that for at least five years he has been actively engaged in the practice of electrology and that he possesses the qualifications to instruct students in the theory and practice of electrolysis, shall be given an examination by the board, and, if he passes such examination, shall be licensed as a qualified instructor, and granted a license signed by the chairman and the secretary of the board in testimony thereof. Such license shall be valid for a period of two years from the date of its issue, and may be renewed for a like period upon application therefor on blank forms to be furnished by the board. The fee for each such renewal shall be ten dollars. Such license shall be valid only when instructing in an electrolysis school licensed under this section.

Added by St.1958, c. 625, § 2. Amended St.1964, c. 518, § 2; by St.1973, c. 782.

§ 87MMM. Rules and regulations; publication

The board may make and shall publish necessary rules and regulations for the proper discharge of its duties and the enforcement of sections eighty-seven FFF to eighty-seven *OOO*, inclusive.

Added by St.1958, c. 625, § 2.

§ 87NNN. Penalties

Whoever violates any provision of sections eighty-seven FFF to eighty-seven *OOO*, inclusive, for which a penalty is not otherwise prescribed, or any rule or regulation of the board shall be punished by a fine of not more than twenty dollars.

Added by St.1958, c. 625, § 2.

§ 87OOO. Licensing without examination

The board may, upon the payment of a fee of twenty-five dollars, grant, without examination, a license to practice electrolysis, and issue a certificate, to any person licensed or registered under the laws of any other state, which state, in the opinion of the board, shall require a degree of competency equal to that required of applicants for licensure as electrologists in this commonwealth, and which extends a like courtesy to electrologists licensed in this commonwealth.

The board shall, upon the payment of a fee of fifty dollars, examine any person who makes application, upon a form furnished by the board, for a license to practice electrolysis, provided such applicant furnishes the board with satisfactory proof that he is eighteen years of age or over, of good moral character, and a citizen of the United States or has filed a declaration of intention to become a citizen of the United States, and furnishes the board with documentary proof that he has been actively engaged in the practice of electrolysis in another state for not less than ten years immediately preceding the date of his application. If such person passes such examination, the board shall grant him a license to practice electrolysis and shall issue him a certificate signed by the chairman and secretary of the board in testimony thereof. Such license shall be valid until August first of the next odd year and may be renewed for a two year period upon application thereof upon a form furnished by the board. The fee for such renewal shall be thirty dollars.

Added by St.1958 c. 625, § 2. Amended by St.1967, c. 137; St.1973, c. 925, § 29.

REGISTRATION OF CERTIFIED HEALTH OFFICERS

§ 87WWW. Definitions

For the purposes of this section and sections eighty-seven XXX to eighty-seven ZZZ, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:

"Board", the board of certification of health officers established by section seventy of chapter thirteen.

"Health officer", a person with a broad basic education and experience in the physical and biological and social sciences supplemented by specialization in the field of health administration and who is qualified to carry out public health administrative duties and enforce the laws in the field of public health.

Added by St.1970, c. 521, § 2.

§ 87XXX. Application; certification; renewal; fees

A person who desires to be certified as a health officer shall file with said board an application upon a form to be prescribed and furnished by the board. He shall include in such application under oath his qualifications as a health officer. Said application shall be accompanied by a registration fee of twenty-five dollars.

If the board deems the educational qualifications of the applicant are satisfactory and if he passes an examination both written and oral satisfactory to the board, the board shall issue him a certificate. Said certification shall expire at the end of the calendar year and may be renewed on or before January fifteen of the following year. The fee for renewal or certification shall be five dollars and shall be acknowledged by sending the person certified a notice of renewal.

Added by St.1970, c. 521, § 2.

§ 87YYY. Qualifications; temporary certification

The board may by rule establish the minimum educational and experience qualifications which the applicants must possess before being allowed to take the examination for certification as health officers and may in like manner provide for the issuance of temporary certification pending an examination to applicants who appear to be qualified and may in like manner provide for the issuance of certification without examination to persons holding certification of licenses as health officers under the laws of another state.

Added by St.1970, c. 521, § 2.

§ 87ZZZ. Title: Certified Health Officer or C.H.O.

Any person to whom a certificate or certification as a health officer has been issued shall have the right to use after his name the title "Certified Health Officer" or the letters "C.H.O.". No other person shall assume such title or use such letters or any other words, letters or writing to indicate that he is a certified health officer. No employee of a local board of health shall be required to be a certified health officer as a condition precedent to employment.

Added by St.1970, c. 521, § 2.

CERTIFICATION OF OPERATORS OF WASTE WATER TREATMENT FACILITIES

§ 87AAAA. Application; certificate; renewal; fees; temporary emergency certification

A person who desires to be certified as an operator of a waste water treatment facility shall file with the board of certification of operators of waste water treatment facilities established by section sixty-six A of chapter thirteen, an application upon a form to be furnished by said board. He shall include in such application under oath his qualifications. If the qualifications of the applicant meet or exceed the minimum qualifications established by said board and if he passes an examination satisfactory to the board, the board shall issue him either a certificate as an operator or a certificate as an operator in training which shall expire at the end of the calendar year and may be renewed from year to year thereafter. The fee for the original certificate shall be ten dollars and for any renewal thereof five dollars. Said board may provide for the issuance for good cause shown of temporary emergency certification to be effective for a period of no longer than six months. The fee for said temporary emergency certification shall be ten dollars.

Added by St.1970, c. 781, § 2. Amended by St.1975, c. 736.

§ 87BBBB. Operation of treatment facilities; necessity of certification; penalty; jurisdiction

No person, corporation, city, town or district shall operate a treatment facility used for treating, neutralizing or stabilizing waste water from homes, public buildings, commercial or industrial establishments or any combination thereof, unless the person in charge thereof shall have received a certificate of competency issued by the board of certification of waste water treatment facility operators established by section sixty-six A of chapter thirteen, or unless said board shall have issued a temporary emergency certification for a duration of not more than six months. Violation of this section shall be punished by a fine of not more than twenty dollars for each day such violation occurs. The superior court shall have jurisdiction in equity to enforce the provisions of this section.

Added by St.1970, c. 781, § 2. Amended by St.1971, c. 277.

CERTIFICATION OF OPERATORS OF DRINKING WATER SUPPLY FACILITIES

§ 87CCCC. Application; qualifications; examination; certificate; renewal; fees; temporary emergency certification

A person who desires to be certified as an operator of a drinking water supply facility shall file with the board of certification of operators of drinking water supply facilities, established by section sixty-six B of chapter thirteen, an application upon a form to be furnished by said board. He shall include in such application under oath his qualifications. If the qualifications of the applicant meet or exceed the minimum qualifications established by the board, and if he passes an examination satisfactory to the board, the board shall issue him a certificate, which shall expire at the end of the calendar year in which it is issued and which may be renewed from time to time for periods of not more than four years thereafter, as the board shall determine. The fee for the original certificate shall be twenty dollars and for any renewal thereof, ten dollars per year. Said board may provide for the issuance for good cause shown of temporary emergency certification to be effective for a period of no longer than six months.

Added by St.1971, c. 942, § 2. Amended by St.1975, c. 622.

§ 87DDDD. Operation of drinking water supply facilities; necessity of certification; penalty; jurisdiction

No person, corporation, city, town or district shall furnish to the public any drinking water for which any charge is made unless the treatment and distribution of such water is at all times under the supervision of a person who shall have received a certificate of competency issued by the board of certification of operators of drinking water supply facilities, established by section sixty-six B of chapter thirteen, or unless said board shall have issued a temporary emergency certification for a duration of not more than six months. Violation of this section shall be punished by a fine of not more than twenty dollars for each day such violation occurs. The superior court shall have jurisdiction in equity to enforce the provisions of this section.

Added by St.1971, c. 942, § 2.

GENERAL PROVISIONS AS TO ALL STATE BOARDS OF REGISTRATION OR EXAMINATION

§ 88. Issuance of certified statements and duplicate certificates of registration

Except as otherwise provided in section thirty-three of chapter ninety, every board of registration or examination established by the commonwealth shall—

(1) Establish rules and regulations stipulating what information is to be furnished in a certified statement of registration for the fee of one dollar, and stipulating that, in case any additional information is furnished, the fee shall be two dollars.

(2) Furnish to any applicant the certified statement of registration applied for, provided that the application therefor is accompanied by the fee prescribed by its rules and regulations established as provided above.

(3) Issue a duplicate certificate of registration upon satisfactory evidence that the original certificate has been lost or destroyed, and the fee therefor shall be five dollars, except that the fee for duplicates of certificates of registration issued under sections eighty-seven T to eighty-seven JJ, inclusive, shall be one dollar; provided, however, that if the original certificate of registration issued under said sections has been lost or destroyed by fire, flood or hurricane, a du-

plicate certificate of registration may be issued for the unexpired term without fee.

Amended by St.1941, c. 626, § 13; St.1956, c. 410.

REGISTRATION OF CHIROPRACTORS

§ 89. Definitions

For the purposes of this section and sections ninety to ninety-seven, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:

"Board", the board of registration of chiropractors established by section sixty-four of chapter thirteen.

"Chiropractic", the science of locating, and removing interference with the transmission or expression of nerve force in the human body, by the correction of misalignments or subluxations of the bony articulation and adjacent structures, more especially those of the vertebra column and pelvis, for the purpose of restoring and maintaining health. It shall exclude operative surgery, prescription or use of drugs or medicines, the practice of obstetrics, the treatment of infectious diseases, and internal examinations whether or not diagnostic instruments are used except that the X-ray and analytical instruments may be used solely for the purposes of chiropractic examinations.

"Chiropractor", a person who lawfully practices chiropractic.

"License renewal certificate", a certificate issued annually by the board to a registered chiropractor upon payment of the license fee as provided in section ninety-six, and upon presentation of satisfactory evidence to the board that said chiropractor has completed the prescribed educational requirements for renewal.

Added by St.1966, c. 409, § 2. Amended by St.1972, c. 447, § 1.

§ 90. Rules and regulations; records; reports

The board may make and publish necessary rules and regulations for the proper conduct of its duties, and shall keep a full record of its proceedings and keep a record of the names of all persons examined or registered by it, which shall be open to public inspection. The board shall make an annual report containing a full and complete account of all of its official acts during the preceding year and setting forth the condition of chiropractic in the commonwealth.

Added by St.1966, c. 409, § 2.

§ 91. Application for certificate; filing; fees; qualifications of applicant

Every person, before engaging in the practice of chiropractic in this commonwealth, shall make application to the board, on a form prescribed and furnished by it, for a certificate to practice chiropractic. Said application shall be filed with the secretary of the board at least thirty days before the date of examination, and shall be accompanied by an examination fee of twenty-five dollars or, in the case of a reexamination, each applicant shall pay a fee of five dollars for each subject upon which he is reexamined, but the aggregate of such reexamination fees shall not exceed twenty dollars. Each applicant must be at least eighteen years of age and of good moral character, and shall furnish the board with satisfactory proof that he has completed two years in a curriculum leading to a bachlor's degree in liberal arts or science and that he is a graduate of a chiropractic school or college approved by the board, and which is (1) authorized by its charter to confer the degree of doctor of chiropractic; (2) gives a course of four academic years, comprising a total of four thousand hours, to matriculants possessing the educational qualifications required for graduation from an accredited public high school; and (3) confers such degree only after personal attendance of the applicant therefor at such course, and upon completion thereof.

Added by St.1966, c. 409, § 2. Amended by St.1966, c. 409, § 5; St.1968, c. 453; St.1973, c. 925, § 32.

§ 92. Licensees of other states; registration

Any person licensed by a chiropractic board of any other state having at the time when said person obtained his license a standard equal to that of this commonwealth and which extends similar privileges to persons licensed by the commonwealth, or any person certified by the National Board of Chiropractic Examiners of the United States, may be registered at the discretion of the board upon the payment of a fee of one hundred dollars and the production to the board of his diploma, the license obtained in such other state by examination or the proof of his certification by said National Board of Chiropractic Examiners of the United States, and evidence satisfactory to the board that he is of good moral character. The board may accept any or all facts of the examination of said National Board of Chiropractic Examiners of the United States in lieu of equivalent subjects in the examination required under section ninety-four. Any person making application under this section under a license granted by another state shall produce evidence that he has practiced chiropractic under such license for at least three years.

Added by St.1966, c. 409, § 2. Amended by St.1968, c. 137.

§ 93. Refusal to grant certificate; revocation

The board may refuse to grant a certificate to any person who has been convicted of a felony involving moral turpitude, who has been guilty of unprofessional conduct, or who is addicted to any vice to such a degree as to render him, in the opinion of the board, unfit to practice chiropractic, and may, for any of said causes, after due notice and hearing, revoke a certificate already issued.

Added by St.1966, c. 409, § 2.

§ 94. Examinations; registration; certificate; display

The board shall examine each applicant as to his qualifications for the practice of chiropractic. Such examination shall be in writing, and except as otherwise provided by section ninety-two, shall include the subjects of anatomy, physiology, chemistry, pathology, diagnosis, hygiene, public health, the use and effects of X-ray and chiropractic principles and practice as taught in chiropractic schools and colleges, and its examination shall also include practical demonstrations of chiropractic technique. Except for the examinations in chiropractic principles and practice, the use and effects of X-ray, and the practical demonstrations of chiropractic techniques, the examinations required by this section may be proposed by the board of higher education, and shall be under the direction and supervision of the board of registration of chiropractors. Every applicant whom the board finds qualified to practice chiropractic shall be registered as a chiropractor by the board, and a certificate of such registration signed by the chairman and secretary of the board shall be issued to such applicant. Said certificate shall entitle the person to whom it is issued to practice chiropractic in this commonwealth, shall designate him as a chiropractor and shall be publicly displayed at his principal office so long as he shall continue to practice chiropractic. The board shall furnish each person registered as a chiropractor a copy of section eighty-nine, which copy shall be the same size as the certificate of registration and shall be similarly displayed.

Added by St.1966, c. 409, § 2.

§ 95. Unauthorized practice or impersonation; penalty

Whoever, not being lawfully authorized to practice chiropractic in this commonwealth, practices or attempts to practice chiropractic, or holds himself out as a practitioner of, or as being able to practice, chiropractic, or uses the science or system of chiropractic, or uses any of the titles, words or letters, "chiropractic", "chiropractor", "chiropractic physician", "doctor of chiropractic", "D.C.", or any other titles or letters, either alone or with qualifying words or phrases, in such manner or under such circumstances as to indicate that he is engaged in the practice of chiropractic, or whoever practices chiropractic under a false or assumed name or under a name other than that by which he is registered, or whoever personates another practitioner of chiropractic, or whoever buys, sells or fraudulently obtains any diploma, license, license renewal certificate, or record or registration to practice chiropractic, or aids or abets in such selling or fraudulent obtaining, or whoever practices chiropractic under cover of any diploma, license, license renewal certificate, record or registration to practice chiropractic illegally obtained or signed or issued unlawfully or under fraudulent representations or whoever being licensed to practice chiropractic in this commonwealth uses any title, words or letters which do not indicate that he is engaged in the practice of chiropractic, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment for not less than thirty days nor more than one year, or both.

Added by St.1966, c. 409, § 2; St.1969, c. 313. Amended by St.1972, c. 447, § 2.

§ 96. Address; notification of board; license fee; change of address; suspension of authority; list of chiropractors

Every registered chiropractor, upon commencing to practice, shall forthwith notify the board of his office address or addresses. Every registered chiropractor practicing as aforesaid shall annually, before April first, pay to the board a license fee, which license fee shall be set annually by the board but which shall not exceed ten dollars. The board shall thereupon issue to said registered chiropractor a license renewal certificate; provided, however, that said chiropractor shall furnish to the board satisfactory evidence that he has attended, in the twelve months preceding each renewal date, twelve hours of instruction in chiropractic related subjects as conducted by the Massachusetts Chiropractic Society or received instruction equivalent thereof as approved by the board. Satisfactory evidence of completion of post-graduate study of a type and character, at an educational session or institution, both as approved by the board, shall be considered said equivalent. The board may waive such educational requirements if it is satisfied that an applicant was prevented from meeting said educational requirements by reason of an unusual emergency, or that the applicant has undergone an extreme hardship, or for other good and sufficient reason deemed adequate by the board. Each registered chiropractor shall promptly notify the board of any change in his address or addresses, and from time to time shall furnish such other information to the board as it may require. The board may suspend the authority of any registered chiropractor to practice chiropractic for failure to comply with any of the above requirements. The board shall publish annually complete lists of the names and office addresses of all chiropractors registered and practicing in the commonwealth arranged alphabetically by name and also by the towns where their various offices are situated.

Added by St.1966, c. 409, § 2. Amended by St.1968, c. 477; St.1972, c. 447, § 3.

§ 97. Rendition of services; advertisement

Registered chiropractors may render services under the terms and provisions of the workmen's compensation and rehabilitation laws.

No registered chiropractor or person practicing chiropractic shall include, or permit or cause to be included, in any advertising in any newspaper, or by radio, television, display sign, personal solicitation or other manner of advertising, any written or spoken words or statements of character tending to deceive or mislead the public.

Added by St.1966, c. 409, § 2. Amended by St.1978, c. 508, § 9.

REGISTRATION AND LICENSING OF PSYCHOLOGISTS

§ 118. Definitions

As used in sections one hundred and eighteen to one hundred and thirty, inclusive, the following words shall have the following meanings unless the context clearly indicates a different meaning:

"Psychologist", an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to practice psychology in the commonwealth.

"The practice of psychology", rendering or offering to render professional service for any fee, monetary or otherwise, to individuals, groups of individuals, organizations, or the public; which services involve the application of psychological principles, methods or procedures in the prediction, interpretation or modification of psychological processes or behavior.

Such professional services may include, but are not limited to, administration and interpretation of psychological tests and assessment procedures; diagnosis, prevention, treatment or amelioration of adjustment problems or mental and emotional disorders; counseling; psychotherapy; hypnosis; personnel selection; mediation of interpersonal and social conflicts; evaluation and development of educational programs; assessment of attitudes and opinion; improvement of marketing and advertising, and design and conduct of psychological research.

"Board", the board of registration of psychologists.

"Recoznized educational institution", a degree-granting college or university recognized as such by the United States Office of Education or the commonwealth.

Added by St.1971, c. 1021, § 2.

§ 119. Application; contents and requirements

Each person desiring to obtain a license as a psychologist shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he:

(*a*) Is of good moral character;

(*b*) Has received a doctoral degree in psychology, or in a closely related field with a major emphasis in psychology, from a recognized educational institution;

(*c*) Has engaged for the equivalent of at least two years full time, at least one year of which was subsequent to his receiving the doctoral degree, in psychological employment, teaching, research, or professional practice under the supervision of or in collaboration with a licensed psychologist, or one clearly eligible for licensure in the opinion of the board;

(*d*) Conducts his professional activities in accordance with accepted standards such as the Ethical Standards of Psychologists of the American Psychological Association, or the Ethical Standards of the American Personnel and Guidance Association.

Added by St.1971, c. 1021, § 2.

§ 120. Examination of applicants

Upon satisfaction of requirements specified in section one hundred and nineteen, the applicant shall pass an examination administered by the board. Examinations shall be conducted at least once a year at a time and place to be designated by the board. Examinations shall be written, oral, or both as the board deems advisable. An applicant shall be held to have passed an examination upon the affirmative vote of at least three members of the board. Any person who shall have failed an examination conducted by the board may not be admitted to a subsequent examination for a period of at least six months.

Added by St.1971, c. 1021, § 2.

§ 121. Issuance of license without examination

Notwithstanding the provisions of section one hundred and twenty, the board may issue a license without examination to an applicant who presents evidence that he has been licensed or certified as a psychologist by a similar board of another jurisdiction whose standards, in the opinion of the board, are not lower than those required in the commonwealth; or that he holds a diploma from a nationally recognized board or agency approved by the board.

Added by St.1971, c. 1021, § 2.

§ 122. Unauthorized practice or use of title; punishment

On and after January first, nineteen hundred and seventy-four, any person not licensed to practice psychology who holds himself out to be a psychologist, or who uses the title "psychologist" or engages in the practice of psychology in a manner that implies or would reasonably be deemed to imply that he is so licensed shall be punished by a fine of not more than five hundred dollars, or by imprisonment for not more than three months, or both.

Added by St.1971, c. 1021, § 2.

§ 123. Penalties; exemptions

The penalties in section one hundred and twenty-two shall not apply to:

(*a*) The salaried employment of individuals in recognized educational institutions, federal, state, county or local governmental institutions, non-profit community agencies, or research facilities while performing those duties for which they are employed by such institutions, agencies, or facilities;

(*b*) The salaried employment of individuals certified as school psychologists by the department of education when functioning within the scope of their employment by a private or public school system;

(*c*) The salaried employment of individuals in corporations, partnerships, associations, or for persons, providing psychological services for remuneration while performing those duties for which they are employed by such organizations or persons, under the supervision of a licensed psychologist;

(*d*) Persons eligible for licensure under section one hundred and nineteen who are full time employees of a recognized educational institution or a non-profit research facility who are solicited for consultation of a research nature;

(*e*) Persons eligible for licensure under section one hundred and nineteen who provide consultative services for a fee no more than one day a month;

(*f*) Students of psychology, psychological interns or persons preparing for the practice of psychology under qualified supervision in a recognized training institution or facility provided that they are designated by such titles as "psychological intern", "psychological trainee", or others clearly indicating such training status.

Added by St.1971, c. 1021, § 2. Amended by St.1977, c. 829, § 10.

§ 124. Temporary licenses

The board may grant a temporary license for a period not to exceed one year to a psychologist with legal residence outside the commonwealth to practice within the commonwealth provided he registers with the board and practices in consultation with, or under the supervision of, a licensed psychologist, or possesses qualifications acceptable to the board.

Added by St.1971, c. 1021, § 2.

§ 125. Exclusion of other professions or occupations from application of licensing or registration requirements

Nothing in sections one hundred and eighteen to one hundred and twenty-nine, inclusive, shall be construed to prevent qualified members of other professions or occupations such as physicians, teachers, members of the clergy, authorized Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment counselors, speech pathologists, audiologists, or rehabilitation counselors from doing work of a psychological nature consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are psychologists or are licensed to practice psychology.

Added by St.1971, c. 1021, § 2.

§ 126. Fees

The following fees shall be assessed and collected by the board: (*a*) Application fee, fifty dollars, (*b*) Initial license fee, twenty-five dollars, (*c*) Temporary license fee, ten dollars, (*d*) Biennial renewal fee, twenty-five dollars.

Added by St.1971, c. 1021, § 2.

§ 127. Term of license; renewal

Licenses shall be valid for two years and shall be renewed biennially. On or before April fifteenth every two years the secretary of the board shall forward to each licensed psychologist an application form for renewal. Upon the receipt of the completed form and the renewal fee on or before June first, the secretary shall renew the license for two years commencing July first. Any application for renewal of a license which has expired shall require the payment of a new application fee.

Added by St.1971, c. 1021, § 2.

§ 128. Revocation or suspension of license; notice, hearing, order; injunction

The board may revoke any license, or may suspend the same for a definite period not to exceed two years, if the holder has been convicted of a felony involving moral turpitude in connection with the practice of psychology, or has been found by the board to have employed fraud or deceit in obtaining his license or to have acted improperly, unethically or with gross negligence in the conduct of his profession.

Notice in writing of a contemplated revocation or suspension of a license, of the cause therefor in sufficient particularity, and of the date of hearing thereon, shall be sent by registered or certified mail to the licensee at his last known address at least fifteen days before the date of such hearing. The psychologist against whom a charge is filed shall have a right to appear before the board in person or by counsel, or both, may produce witnesses and evidence in his behalf, and may question witnesses. No license shall be revoked or suspended without such hearing, but the nonappearance of the licensee, after notice, shall not prevent such hearing. All matters upon which the decision is based shall be introduced in evidence at the proceeding. The licensee shall be notified in writing of the board's decision. The board may make such rules and regulations as it deems proper for the filing of charges and the conduct of hearings.

After issuing an order or revocation or suspension the board may also file a petition in equity in the superior court in a county in which the respondent resides or transacts business, or in Suffolk county, to ensure appropriate injunctive relief to expedite and secure the enforcement of its order, pending the final determination.

Added by St.1971, c. 1021, § 2.

§ 129. Reinstatement of license

After three years from the date of revocation, an application for reinstatement may be made to the board, which may, upon the affirmative vote of at least three of its members, grant such reinstatement.

Added by St.1971, c. 1021, § 2.

LICENSING OF SOCIAL WORKERS

§ 130. Definitions

As used in this section and sections one hundred and thirty-one to one hundred and thirty-seven, inclusive, the following words shall have the following meanings, unless the context clearly indicates a different meaning:

"Board", means the board of registration of social workers.

"Recognized educational institution", a degree granting college or university recognized as such by the United States Office of Education or the commonwealth.

"Social worker", an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to engage in the practice of social work in the commonwealth.

"The practice of social work", rendering or offering to render professional service for any fee, monetary or otherwise, to individuals, families, or groups of individuals, which services involve the application of social work theory and methods in the prevention, treatment, or resolution of mental and emotional disorders or family or social dysfunctioning caused by physical illness, intrapersonal conflict, interpersonal conflict or environmental stress. Such professional services may include, but shall not be limited to, the formulation of a psychosocial evaluation, counseling, psychotherapy of a nommedical nature, referral to community resources, and the development and provision of educational programs.

"Counseling", engaging individuals, families, or groups of individuals in conscious, problem solving discussions about psychosocial problems. Such counseling efforts may or may not include facilitating the client's obtaining financial or other forms of environmental assistance.

"Psychotherapy of a nommedical nature", the utilization of psychological and interpersonal theories and related practice methodologies to assess, interpret and modify conscious and unconscious processes of behavior.

"Licensed certified social worker", an individual who is licensed by the board to practice social work and who meets the qualifications set forth in section one hundred and thirty-one for a certified social worker.

"Licensed social worker", an individual who is licensed by the board to practice social work and who meets the qualifications set forth in section one hundred and thirty-one for a social worker.

"Licensed social work associate", an individual who is licensed by the board to practice social work and who meets the qualifications set forth in section one hundred and thirty-one for a social work associate.

"The independent practice of clinical social work", rendering or offering to render professional services for any fee, monetary or otherwise, to individuals, families, or groups of individuals, which services involve the application of social work theory and methods in the treatment of mental and emotional disorders through the use of psychotherapy of a nonmedical nature by an individual who is not providing such services under the employ of a recognized educational institution, federal state or municipal institution, or an institution, facility or agency which is licensed to operate under the laws of the commonwealth.

"Licensed independent clinical social worker", an individual who is licensed by the board to practice independent clinical social work and who meets the qualifications set forth in section one hundred and thirty-one for an independent clinical social worker.

Added by St.1977, c. 818, § 2.

§ 131. Application; requirements; exemption from examination and experience

Any individual desiring to obtain a license as a certified social worker shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he has received a doctorate or master's degree in social work from an accredited educational institution; has passed an examination prepared by the board for this purpose; and will conduct his professional activities as a certified social worker in accordance with generally accepted professional standards.

Any individual desiring to obtain a license as a social worker shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he has received a baccalaureate degree in social work from an accredited educational institution, or; has received a baccalaureate degree from an accredited educational institution and, in addition, has had two years of full-time, or the equivalent in part-time, experience in a social service setting deemed suitable by the board; provided, however, that two years of such experience may also be substituted for each year of undergraduate college education. When such substitution is utilized, a minimum of five years of such experience shall be required. Said individual shall also furnish evidence satisfactory to the board that he has passed an examination prepared by the board for this purpose; and will conduct his activities as a social worker in accordance with generally accepted professional standards.

State, county, and municipal employees are exempt from the examination and experience requirements necessary to become a licensed social worker provided they have completed six months of employment in a public agency as a social worker and have passed equivalent civil service examinations or have satisfied the board that they can otherwise meet the examination or experience requirements for licensing as set forth in this act. In the event of a dispute over equivalency, the board shall consult with the appropriate public employment authorities before rendering a final decision.

Any individual desiring to obtain a license as a social work associate shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he has received an associate in arts degree in a human service field or a baccalaureate degree from an accredited educational institution or can satisfy the board's requirements for equivalent educational credits. Two years of full-time, or the equivalent in part-time, experience in a social service setting deemed suitable by the board may be substituted for each year of undergraduate college education. Said individual shall also furnish evidence satisfactory to the board that he has passed an examination prepared by the board for this purpose; and he will conduct his activities as a social work associate in accordance with generally accepted professional standards.

State, county, and municipal employees are exempt from the examination and experience requirements necessary to become a licensed social work associate provided they have completed six months of employment as a social worker in a public agency and have passed equivalent civil service examinations or have satisfied the board that they can otherwise meet the examination or experience requirements for licensing as set forth in this section. In the event of a dispute over equivalency, the board shall consult with the appropriate public employment authorities before rendering a final decision.

Any individual desiring to obtain a license as an independent clinical social worker shall make application therefor to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that he is licensed under this section as a certified social worker; has had three years of full-time experience in the field of clinical social work, or the equivalent in part-time experience which is acceptable to the board, at least two of which are subsequent to receiving the master's degree in social work; and has passed a specialty examination in clinical social work prepared by the board for this purpose.

Added by St.1977, c. 818, § 2.

§ 132. Examination of applicants; re-examination; issuance of license without examination

Examinations for licensed certified social workers, including those in independent clinical practice, licensed social workers and licensed social work associates shall be conducted at least four times per year at times and places designated by the board. Examinations shall be written, oral or both written and oral, as requested by the individual applicant. An applicant shall be held to have passed such examination upon the decision of at least four members of the board. Any person who shall have failed an examination conducted by the board may be admitted to the next subsequent examination.

The board may issue a license without examination to an applicant who satisfies the board that he has passed an examination and is or has been licensed or registered under the laws of another state, territory, or political subdivision of the United States, whose standards, in the opinion of the board, are substantially the equivalent of the requirements of section one hundred and thirty-one, and whose license has not been suspended or revoked by the licensing jurisdiction.

Added by St.1977, c. 818, § 2.

§ 133. Unauthorized practice; punishment

No person shall engage in the practice of social work unless he is licensed under the provisions of section one hundred and thirty-one.

No person shall hold himself out to be a licensed certified social worker, or a licensed social worker, or a licensed social work associate unless he has met the applicable requirements set forth in section one hundred and thirty-one.

No person shall engage in the independent practice of clinical social work or hold himself out to be a licensed independent clinical social worker unless he is licensed under the applicable provisions of section one hundred and thirty-one.

Violation of this section shall be punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than three months or by both such fine and imprisonment.

Added by St.1977, c. 818, § 2.

§ 134. Practice of social work by certain parties

Nothing in sections one hundred and thirty to one hundred and thirty-seven, inclusive, shall be construed to prevent qualified members of other professions or occupations such as licensed physicians, registered nurses, licensed practical nurses, licensed psychologists, members of the clergy, attorneys, clinical members of the American Association of Marriage and Family Counselors, school adjustment or school guidance counselors who are employed by recognized private educational institutions while performing those duties for which they are employed, registered occupational therapists or certified occupational therapist assistants who are certified by the American Occupational Therapy Association, certified rehabilitation counselors who are certified by the Commission on Rehabilitation Counselor Certification of the National Rehabilitation Counselors Association and the American Rehabilitation Counselors Association, from doing work of a social service nature; provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are engaged in the practice of social work, or that they are licensed to practice social work or independent clinical social work.

Nothing in sections one hundred and thirty to one hundred and thirty-seven, inclusive, shall prevent the practice of social work by students of social work or social work interns or persons preparing for the practice of social work under qualified supervision in a recognized educational institution or facility so long as they are designated by such titles as "social work student", "social work trainee", or "social work intern", or others clearly indicating such training status.

Nothing in sections one hundred and thirty to one hundred and thirty-seven, inclusive, shall prevent the practice of social work or the use of the official titles social worker or social work associate by individuals employed in state, county, or municipal governmental agencies, provided that such persons are performing those activities as part of the duties for which they are employed or solely within the confines or under the jurisdiction of the agency in which they are employed.

A license to practice social work shall not be a requirement for qualification for civil service examinations nor shall it be a requirement for employment in any state, county, or municipal agency.

Added by St.1977, c. 818, § 2.

§ 135. Confidential information; disclosure prohibited; exceptions

No social worker in any licensed category, including those in private practice, may disclose any information he may have acquired from persons consulting him in his professional capacity except:

(*a*) with the written consent of the person or, in the case of death or disability of his own personal representative, other person authorized to sue, or the beneficiary of an insurance policy on his life, health, or physical condition;

(*b*) that a licensed certified social worker, including those engaged in independent clinical practice, licensed social worker, or licensed social work associate shall not be required to treat as confidential a communication that reveals the contemplation or commission of a crime or a harmful act;

(*c*) when the person waives the privilege by bringing charges against the licensed certified social worker, including those engaged in independent clinical practice, the licensed social worker, or the licensed social work associate.

Added by St.1977, c. 818, § 2.

§ 136. Licenses; effective date; expiration; renewal; continuing education requirements, waiver

All licenses shall be effective when issued by the board. The license of licensed certified social workers, including those engaged in independent clinical practice, licensed social workers and licensed social work associates shall expire on a date to be determined by the board.

A license may be renewed by the payment of the renewal fee as set by the board and by the completion and submission on a form provided by the board of a sworn statement by the applicant that his license has been neither revoked nor is currently suspended and that he has not been convicted of a felony involving moral turpitude in connection with the practice of social work.

The application for renewal may be made within one year of the expiration of the license.

At the time of license renewal, each applicant shall present satisfactory evidence that in the period since the license was issued, he has completed the continuing education requirements specified by the board.

In the case of renewal of licenses for state, county, and municipal employees, the continuing education requirement shall be waived provided that the applicant can show satisfactory evidence of his continued employment in the field of social work during this period of time.

Added by St.1977, c. 818, § 2.

§ 137. Licenses; board's refusal to renew; revocation; suspension; notice; hearing; enforcement by injunction; reinstatement

The board may refuse to renew, revoke, suspend for an indefinite period or cancel the certificate of registration or order further training or reprimand, censure or otherwise discipline a licensee on proof after a hearing that the person has been convicted of a felony involving moral turpitude in connection with the practice of social work or has been found guilty by the board of having employed fraud or deceit in obtaining his license unethically or of gross negligence in the conduct of his practice. Notice in writing of a contemplated revocation or suspension of a license, of the cause therefor in sufficient particularity and of the date of the hearing thereon, shall be sent by registered or certified mail to the licensee at his last known address at least fifteen days before the date of such hearing. The social worker against whom a charge has been filed shall have a right to appear before the board in person or by counsel, or both, may produce witnesses and evidence in his behalf, and may question witnesses. No license shall be revoked or suspended without such hearing, but the non-appearance of the licensee, after notice, shall not prevent such hearing. All matters upon which the decision of the board is based shall be specified in writing and the licensee shall receive written notification of the board's decision. Except as specified above, all proceedings conducted by the board pursuant to this section shall be implemented in accordance with the provisions of chapter thirty A.

After issuing an order for revocation or suspension the board may also file a petition in equity in the superior court in the county in which the respondent resides or conducts his practice of social work, or in Suffolk county, to ensure appropriate injunctive relief to expedite the secure enforcement of its order.

The board may, not less than three years after the revocation of any license to practice social work, accept an application to reinstate such license. The board may reinstate such license if, in its opinion, the circumstances causing such revocation no longer warrant continuation of the revocation.

Added by St.1977, c. 818, § 2.

CHAPTER 113

PROMOTION OF ANATOMICAL SCIENCE

Sec.

1. Disposition of bodies of deceased persons.
2. Bodies of veterans, strangers or travelers; disposition.
3. Identification of body of deceased person; delivery of body for burial.
4. Bond of dean or officer of medical school.
5. Autopsies.
6. Dissection of bodies of executed murderers.
7. Gift of body or tissue; definitions.
8. Persons authorized to make gift; rights of donees.
9. Qualified donees.
10. Gifts by will or other document; gifts by next of kin or guardian.
11. Specification of donee; delivery of body or tissue; deposit of donative documents.
12. Amendment or revocation of gift by donor.
13. Acceptance or rejection of gift by donee; disposition or disposal of bodies and tissues; determination of time of death; criminal and civil liability.

§ 1. Disposition of bodies of deceased persons

Upon the written application of the dean or other officer of any medical school established by law in the commonwealth, the penal institutions commissioner of Boston, the trustees and superintendent of the Tewksbury hospital or other public institution supported in whole or part at the public expense, except the Soldiers' Home in Massachusetts and the Soldiers' Home in Holyoke, in this chapter called the authorities, shall permit such dean or other officer to take, within three days after death, the body of any person, required to be buried at the public expense, who died in any institution under the control of such authorities, to be used within the commonwealth for the promotion of anatomical science. In giving such permission regard shall be had to delivering such bodies to any such medical schools in proportion, so far as practicable, to the number of students therein.

Amended by St.1941, c. 351, § 7; St.1958, c. 613, § 2E; St.1961, c. 102; St.1974, c. 260, § 11.

§ 2. Bodies of veterans, strangers or travelers; disposition

Such permission shall not be given to take the body of any veteran as defined in section ten of chapter forty-six, or the body of any stranger or traveler who died suddenly, or the body of a person who, during his last sickness, of his own accord requested that his body be buried or delivered to a friend, but such body shall, in conformity with such request, if any, be buried, or delivered to such friend.

Amended by St.1954, c. 627, § 25.

§ 3. Identification of body of deceased person; delivery of body for burial

No body of a deceased person which is subject to section one shall be used for fourteen days after death for the promotion of anatomical science, but it shall during such period be kept by the authorities or dean or other officer in a condition and place to be viewed by any person, at all reasonable times, for the purpose of identification. If, within such time, any person claiming to be and satisfying the authorities that he is a friend or is of kindred to the deceased asks to have the body buried or surrendered to himself, the body shall in conformity with such request be either buried or delivered to such friend or kindred.

§ 4. Bond of dean or officer of medical school

Such dean or other officer, if he has been given permission to take the body of a deceased person as provided in section one, shall, before receiving it, give to the authorities surrendering it, a bond conditioned that he will comply with the preceding section and that after the time prescribed therein, if the body has not been buried or delivered in accordance therewith, it shall be used only for the promotion of anatomical science in the commonwealth in such manner as not to outrage public feeling, and that, after having been so used, the remains shall be decently buried or cremated.

Amended by St.1977, c. 171, § 2.

§ 5. Autopsies

Before surrendering the body of any such person as provided in the four preceding sections, the chief medical officer of any institution named in section one may, if the cause of the death cannot otherwise be determined and if such body is unclaimed by relatives or friends, cause an autopsy to be made upon it.

§ 6. Dissection of bodies of executed murderers

Upon conviction of murder in the first degree, the court may order the body of the convict after his execution to be dissected. The warden of the state prison shall in such case deliver it to a professor of anatomy or surgery in a medical school established by law in the commonwealth, if so requested; otherwise, he shall, unless the convict's friends desire it for interment, deliver it to any surgeon attending to receive it who will undertake to dissect it.

§ 7. Gift of body or tissue; definitions

In sections eight to thirteen, inclusive, unless the context otherwise requires, the following words shall have the following meanings:

(*a*) "Bank or storage facility" means a facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

(*b*) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(*c*) "Donor" means an individual who makes a gift of all or part of his body.

(*d*) "Hospital" means a hospital licensed, accredited or approved under the laws of any state and includes a hospital operated by the United States government, a state or a subdivision thereof, although not required to be licensed under state laws.

(*e*) "Part" includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of a human body and "part" includes "parts."

(*f*) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(*g*) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(*h*) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America.

Added by St.1971, c. 653.

§ 8. Persons authorized to make gift; rights of donees

(*a*) A person of sound mind and who is eighteen years of age or older may make a gift of all or any part of his body for any purposes specified in section nine, said gift to take effect upon his death or, in the case of a gift of a kidney intended for transplantation by such person at such time prior to his death as he may specify in accordance with the requirements of subsection (*b*) of section ten.

(*b*) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in said section nine.

(1) the spouse,

(2) an adult son or daughter,

(3) either parent,

(4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of his death,

(6) any other person authorized or under obligation to dispose of the body.

(*c*) If the donee has actual notice of contrary indications by the decedent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (*b*) may make the gift after death or immediately before death. Upon admission of a person to any hospital at his request, the hospital shall record in a book kept for the purpose the expression of intent of such person with regard to the disposition of his body and such expression shall be deemed to be sufficient notice under this section.

(*d*) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(*e*) The rights of the donee created by the gift are paramount to the rights of others except as provided by subsection (*d*) of section thirteen.

Added by St.1971, c. 653. Amended by St.1972, c. 344, § 1.

§ 9. Qualified donees

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(2) any accredited medical or dental school, college, or university for education, research, advancement of medical or dental science or therapy; or

(3) any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

Added by St.1971, c. 653.

§ 10. Gifts by will or other document; gifts by next of kin or guardian

(*a*) A gift of all or part of the body under subsection (*a*) of section eight may be made by will. Such gift shall become effective upon the death of the testator. If the will is not probated, or if it is declared invalid for testamentary purposes, such gift, to the extent that it has been acted upon in good faith, shall be nevertheless valid and effective.

(*b*) A gift of all or part of the body under subsection (*a*) of section eight may also be made by a document other than a will. Such gift shall become effective upon the death of the donor. Such gift shall become effective upon the death of the donor, or, in the case of gift of a kidney intended for transplantation, at such time prior to his death as the donor may specify in a document signed by the donor and also by at least two of the physicians who are to participate in the transplantation operation and who shall have previously examined the donor in connection with his gift. In all cases other than those involving the gift of a kidney for transplantation, the document may be a card designed to be carried on the person which shall be signed by the donor in the presence of two competent witnesses who shall attest to and subscribe the document in said donor's presence. Delivery of such document during the donor's lifetime is not necessary to make the gift valid.

(*c*) The gift may be made to a specified donee or without specifying a donee. If no donee is specified, the gift may be accepted by the attending physician as donee upon the death of the donor. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon the death of the donor, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(*d*) Notwithstanding subsection (*b*) of section thirteen, the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures; provided, however, that eye enucleations may be performed also by a technician who has successfully completed a course of training acceptable to the Eye Bank of the Massachusetts Eye and Ear Infirmary. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for said purpose.

(*e*) Any gift by a person designated in subsection (*b*) of section eight shall be made by a document signed by him, or made by his telegraphic, recorded telephonic or other recorded message.

Added by St.1971, c. 653. Amended by St.1972, c. 344, § 2; St.1973, c. 151.

§ 11. Specification of donee; delivery of body or tissue; deposit of donative documents

If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

Added by St.1971, c. 653.

§ 12. Amendment or revocation of gift by donor

(*a*) If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by:

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of two persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(*b*) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (*a*) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(*c*) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (*a*).

Added by St.1971, c. 653.

§ 13. Acceptance or rejection of gift by donee; disposition or disposal of bodies and tissues; determination of time of death; criminal and civil liability

(*a*) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body. If the donee is responsible for the disposition of the body, he shall dispose of it in accordance with the terms specified by the donor, or if no such terms are specified, he shall have said body decently buried or cremated.

(*b*) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(*c*) A person who acts in good faith in accordance with the terms of sections seven to thirteen, inclusive, or under the anatomical gift laws of another state or a foreign country shall not be liable for damages in any civil action or be subject to prosecution in any criminal proceeding for his act.

(*d*) The provisions of sections seven to thirteen, inclusive, shall be subject to the laws of the commonwealth relative to autopsies.

Added by St.1971, c. 653. Amended by St.1977, c. 171, § 3.

CHAPTER 114

CEMETERIES AND BURIALS

CEMETERY AND CREMATORY CORPORATIONS

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CEMETERY AND CREMATORY CORPORATIONS

§ 1. Organization of cemetery corporations

Five or more persons desirous of procuring, establishing and preparing a cemetery, or who are the majority in interest of the proprietors of an existing cemetery, may organize as a corporation, not for profit, in the manner provided in chapter one hundred and seventy-nine; but such corporation shall not sell or impair the right of any proprietor of an existing cemetery.

Amended by St.1936, c. 319, § 1.

§ 2. Powers and duties of cemetery corporations

Such corporation shall be subject to chapter one hundred and fifty-five and the first thirteen sections of chapter one hundred and seventy-nine; may take and hold only so much real and personal property as may be necessary for the objects of its organization; may lay out such real property into lots; and may grant and convey the exclusive right of burial in, and of erecting tombs or cenotaphs upon, any lot and of ornamenting the same, upon such terms and conditions and subject to such regulations as it shall prescribe. Section thirty-four of chapter one hundred and fifty-eight shall apply to such corporation.

§ 3. Records of conveyances of burial lots

Every cemetery corporation created by special charter or organized under general laws shall regularly keep books in which it shall enter all conveyances of burial lots within said cemetery and all instruments of contract relating to conveyances of such lots. Such records, and similar records made by such corporation prior to June second, eighteen hundred and eighty-nine, shall have the same effect as if made in the registry of deeds for the county or district where such cemetery is situated, and no other record shall be necessary.

§ 3A. Ownership of unclaimed graves

Any cemetery corporation created by such special charter or organized under the provisions of section one may take over the ownership of a grave in such cemetery provided that such grave has not been used for a period of fifty years and provided further that the ownership thereof cannot be ascertained. If such ownership is ascertained after such taking such cemetery corporation shall pay the fair value of such grave at the time of taking to the owner thereof.

Added by St.1978, c. 277.

§ 4. Certified copies of recorded deeds and instruments; evidence

The secretary or clerk of such corporation may give certified copies of all deeds and instruments so recorded, which may be used in evidence in the same manner as copies certified by the register of deeds.

§ 5. Trust funds

Such corporation may hold funds in trust and apply the income thereof to the improvement or embellishment of the cemetery or to the care, preservation or embellishment of any lot or its appurtenances.

§ 5A. Burials; denial to designated funeral director; prohibition

No such cemetery corporation shall deny the right to perform burials and the functions incidental thereto to the funeral director designated by the representative of the deceased, provided the deceased is otherwise entitled to interment in said cemetery.

Added by St.1959, c. 256, § 2.

§ 5B. Notification of certain options for burial services; penalty

Each such cemetery corporation shall notify, or cause the funeral director designated by the representatives of the deceased to notify, the family of the deceased or the person making funeral arrangements for the deceased of the choice of three options for burial services: Services at the gravesite without observation of the lowering of the casket into said gravesite, services at the gravesite with observation of the lowering of the casket into said gravesite, or where available, services within a chapel at the cemetery.

A cemetery corporation which violates any provision of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars.

Added by St.1974, c. 688. Amended by St.1975, c. 124.

§ 6. Cremation

Such corporation may cremate bodies of the dead, and may provide necessary buildings and appliances therefor and for the disposition of the ashes of the dead on any land within its cemetery which the department of environmental quality engineering determines is suitable therefor, subject to the provisions of section forty-three D, and such buildings and appliances shall be a part of the cemetery and be dedicated to the burial of the dead, and shall be held by said corporations subject to the duties, and with the privileges and immunities, which they now have by law.

Amended by St.1936, c. 319, § 2; St.1975, c. 706, § 189.

§ 7. Formation and organization of crematory corporations

Five or more persons may form a corporation, not for profit, for the purpose of providing the necessary appliances for the disposal by cremation of the bodies of the dead. Such a corporation shall be formed in the manner prescribed in and subject to section nine of chapter one hundred and fifty-five and sections six and eight to twelve, inclusive, of chapter one hundred and fifty-six, except as follows:

The capital stock, if any, shall not exceed fifty thousand dollars.

The agreement of association of such a corporation having no capital stock may omit the statement of the amount of the capital stock and the par value and number of its shares. The par value of its shares, if any, may be ten or fifty dollars.

Amended by St.1936, c. 319, § 3.

§ 8. Crematory corporations; acquisition and holding of land in fee

Such corporation may acquire and hold in fee, to an amount not exceeding fifty thousand dollars, land necessary and appropriate for its purposes and situated in such place as the department of public health determines to be suitable, subject to the provisions of section forty-three D.

Amended by St.1936, c. 319, § 4.

§ 9. By-laws and regulations of cemeteries and crematory corporations; conduct of business; violations

Cemetery and crematory corporations may, subject to the approval of said department, make by-laws and regulations consistent with law for the reception and cremation of bodies of the dead and for the disposition of the ashes thereof, and shall conduct their business in accordance with such regulations as said department shall establish and furnish in writing to the clerk of the corporation. Violation of any such regulation of said department shall be punished by a fine of not less than twenty nor more than five hundred dollars. Such corporations shall not erect, occupy or use any building for cremation until the location and plans thereof with all details of construction have been submitted to and approved by said department or by a person designated by it, subject to the provisions of section forty-three D.

Amended by St.1936, c. 319, § 5.

PUBLIC CEMETERIES

§ 10. Town burial places

Each town shall provide one or more suitable places for the interment of persons dying within its limits.

§ 10A. Unclaimed graves; taking by towns

Any town may take over the ownership of a grave in a cemetery established under section ten provided that such grave has not been used for a period of fifty years and that the ownership thereof cannot be ascertained. If such ownership is ascertained after such taking the town shall pay the fair value of such grave at the time of the taking to the owner thereof.

Added by St.1977, c. 272.

§ 11. Taking of land for burial purposes; application to county commissioners

If there is necessity for a new cemetery in a town, or for the enlargement of an existing cemetery in and belonging to a town, and the owner or any person interested in the land needed for either purpose refuses to sell the same, or demands therefor a price which the selectmen consider unreasonable, or is unable to convey it, the selectmen may, with the approval of the town, make application therefor by written petition to the county commissioners of the county where the land lies.

§ 12. Taking of land for burial places; hearing notice

The commissioners shall appoint a time and place for a hearing, and shall cause notice thereof and a copy of the petition to be served personally upon the owner, if known, or left at his place of abode, fourteen days at least before the time appointed for the hearing. If the land is held in trust or by a corporation, or if the ownership is uncertain, the commissioners shall also give notice by public advertisement or otherwise.

§ 13. Adjudication by commissioners; taking

The commissioners shall hear the parties at the time and place appointed or at an adjournment thereof, shall adjudicate upon the necessity of such taking, upon the quantity and boundaries of any land adjudged necessary to be taken, and may take in fee under chapter seventy-nine on behalf of the town such land as is adjudged necessary.

§ 14. Compensation of commissioners acting under petition to take land for burial place

Each commissioner shall be paid by the town three dollars a day for each day spent in acting under the petition, and five cents a mile for travel to and from the place of hearing.

§ 15. Appropriation for enclosing and improving cemetery; sale of burial rights; disposition of proceeds

Towns may appropriate money for enclosing any cemetery lawfully provided by them or for constructing paths and avenues and embellishing the grounds therein, and may establish all necessary rules relative thereto consistent with law. They may lay out such cemetery into lots, and shall set apart a suitable portion as a public burial place for the use of the inhabitants, free of charge. They may sell and convey to any person, resident or non-resident, the exclusive right of burial and of erecting tombs and cenotaphs upon any lot and of ornamenting the same, upon such terms and conditions and subject to such regulations as they shall prescribe. The proceeds of such sales shall be paid into the town treasuries, be kept separate from other funds, and be appropriated to reimburse the towns for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

§ 16. Appropriation for and care of cemeteries

Any town may annually appropriate and raise by taxation such sums as may be necessary to care for and keep in good order and to protect by proper fences any or all burial grounds within the town in which ten or more bodies are interred and which are not properly cared for by the owners, and the care and protection of such burial grounds shall be in charge of the cemetery commissioners, if the town has such officers, otherwise in charge of the selectmen.

§ 17. Preservation of ancient burial places

A town shall not alienate or appropriate to any other use than that of a burial ground, any tract of land which has been for more than one hundred years used as a burial place; and no portion of such burial ground shall be taken for public use without special authority from the general court.

§ 18. Care of neglected burial places within limits of town

Any town having within its limits an abandoned or neglected burying ground may take charge of the same and keep it in good order, and may appropriate money therefor, but no property rights shall be violated and no body shall be disinterred. No fence, tomb, monument or other structure shall be removed or destroyed, but the same may be repaired or restored.

§ 19. Deposits for care and improvement of burial places or lots; records; interest

A city or town may receive, hold and apply any funds, money or securities deposited with the treasurer thereof for the preservation, care, improvement or embellishment of any public or private burial place situated therein, or of burial lots situated in such burial places. Such funds, money or securities shall be entered upon the books of the treasurer, and held in accordance with ordinances or by-laws relative thereto. A city or town may pass ordinances or by-laws consistent with law, necessary for the purposes of this section, and may allow interest on such fund at a rate not exceeding six per cent a year. Upon the receipt of a deposit for the preservation, care, improvement or embellishment of individual lots in public burial places, said treasurer shall so inform the city or town clerk, who shall record the facts relating to such deposit in the margin of his records of said lots.

Amended by St.1948, c. 550, § 48.

§ 20. Depositing funds with state treasurer; copy of instrument; notice to town or city clerk

Money declared by written instrument to be intended for perpetual care, maintenance, improvement or embellishment of any cemetery, or of any lots or plots therein, to an amount not less than two hundred dollars, may be deposited with the state treasurer, who shall receive and receipt for it in the name of the commonwealth. The depositors at the time of making such deposit shall file with him and with the state secretary a copy of such instrument. If the cemetery belongs to a corporation, the deposit shall be accompanied by a written agreement, signed by the president thereof, to the effect that it will accept the income derived from the fund so deposited, and will apply it to the purposes set forth in the instrument. Upon the receipt of a deposit for the perpetual care of individual lots or plots in public burial places or cemeteries, the state treasurer shall so inform the clerk of the city or town in which they are located, and said clerk shall record the facts relating to said deposit in the margin of his records of said lots or plots.

Amended by St.1948, c. 550, § 49.

§ 21. Investment of funds; interest

The state treasurer shall invest such money in the name of the commonwealth, in bonds or other obligations of the commonwealth or in securities in which he is authorized to invest money in behalf of the commonwealth; and, on the first days of February and August in each year, he shall pay over the accrued interest thereof to the treasurer of any association owning a cemetery for the care, maintenance or improvement of which, or of any lot therein, the money has been deposited with him. If such cemetery is not owned by any association, such interest shall be paid to the town where the cemetery is located. At the time of paying such interest, the state treasurer shall inform the person to whom it is paid of the purpose to which it is to be applied, as stated in the copy of the instrument which is filed with him, and the person to whom it is paid shall apply it to such purpose.

BOARDS OF CEMETERY COMMISSIONERS

§ 22. Town board of cemetery commissioners; election of members

A town which accepts this and the four following sections or has accepted corresponding provisions of earlier laws may, at any town meeting, elect by ballot a board of cemetery commissioners consisting of three persons. If such board is first chosen at a meeting other than an annual town meeting, one member shall be elected for one year from the day following that fixed for the last preceding annual town meeting, one member for two years and one member for three years from said day; and annually thereafter one member shall, at the annual town meeting, be elected by ballot for a term of three years. Such boards shall choose a chairman, and a clerk who may be a member of the board.

§ 23. Powers and duties

Said board shall have the sole care, superintendence and management of all public burial grounds in its town, may lay out any existing public burial grounds in its town or any land purchased and set apart by said town for such cemeteries, in lots or other suitable subdivisions, with proper paths and avenues, may plant, embellish, ornament and fence the same and erect therein such suitable edifices and conveniences and make such improvements as it considers convenient; and, subject to the approval of the town, may make such regulations, consistent with law, as it deems expedient.

§ 24. Convyeance of burial lots; record; inspection; fee

Said board may, by deed made and executed in such manner and form as it may prescribe, convey to any person the sole and exclusive right of burial in any lot in such cemeteries and of erecting tombs, cenotaphs and other monuments or structures thereon upon such terms and conditions as its regulations prescribe. Such deeds and all subsequent deeds of such lots made by owners thereof shall be recorded in the office of the city or town clerk in books kept for that purpose upon the payment of the fee provided by clause (78) of section thirty-four of chapter two hundred and sixty-two, and said records shall be open to the public at all reasonable times.

Amended by St.1948, c. 550, § 50.

§ 25. Gifts or bequests for cemeteries; investment of funds; disposition of proceeds of sales of lots or burial rights

A town in which cemetery commissioners are chosen may receive gifts or bequests for maintaining cemeteries or cemetery lots, which shall be paid into the town treasury and, with the accounts thereof, shall be kept separate from the other money and accounts of said town. The town treasurer shall invest all such funds in accordance with the stipulations, if any, accompanying them; otherwise he shall invest them as ordered by the selectmen and said commissioners and pay the income therefrom upon their order or with their approval. The proceeds of sales of lots or rights of burial in such cemeteries shall be paid into the town treasury and be appropriated to reimburse the town for the cost of the land, its care, improvement and embellishment, or the enlargement of the cemetery.

Amended by St.1934, c. 85, § 1.

§ 26. Limit of debts or liabilities; annual report

Said board shall not incur debts or liabilities for purposes other than aforesaid nor to an amount exceeding the amount of the funds subject to their order, and it shall annually make a written report to said town of its official acts, of the condition of such cemeteries, and render an account of its receipts and expenditures for the same and of the funds subject to its order.

§ 27. Appointment of board of cemetery commissioners; powers and duties

If a town so votes under section twenty-one of chapter forty-one the selectmen shall appoint a board of cemetery commissioners to consist of three members, to be appointed for the term of three years. The commissioners shall, under the supervision and control of the selectmen, maintain the public cemeteries in the town, and shall with the approval of the selectmen, appoint such employees as are necessary to maintain such cemeteries.

USE OF CEMETERIES

§ 28. Conveyance of lots or interest in lots in trust for preservation as memorial; rights of heirs of owner; control over lot or interest in lot

The owner of any right, title or interest in or to a lot, tomb or monument in any cemetery owned or controlled by any company or association or by any town, may convey or devise the same to such company, association or municipality in trust for the purpose of its preservation as a memorial or as a burial place for the bodies of the owner and his descendants or relatives, or of such other persons as may be specified in the instrument creating the trust, or upon such other trust as may be created by the instrument and accepted by the grantee or devisee; but no such instrument shall be construed to take away the right of the heirs of the owner of a lot or tomb to be buried therein, unless the instrument contains an express provision to that effect. Any such grantee or devisee may accept any such grant, gift or devise, and if it accepts the same shall forever carry out and observe the terms of the instrument by which the grant, gift or devise was made. After the making of a conveyance or the taking effect of a devise and its acceptance by the cemetery authorities, the grantor of the lot, tomb or monument or of any interest therein, or the heirs and assigns of the grantor or devisor thereof, shall have no control over it except such as may be reserved in the instrument.

§ 29. Indivisible character of lots; vesting; limitations and conditions; right of interment; designation of representation of lot; record

Lots in cemeteries incorporated under section one, tombs in public cemeteries in cities and lots and tombs in public cemeteries in towns, shall be held indivisible, and upon the decease of a proprietor of such lot the title thereto shall vest in the heirs at law or devisees of the deceased subject to the following limitations and conditions: If the deceased leaves a spouse and children, they shall have the possession, care and control of said lot or tomb in common during the life of such surviving spouse. If the deceased leaves a spouse and no children, said spouse shall have possession, care and control of such lots or tombs during life. If the deceased leaves children and no spouse, they shall have in common the possession, care and control of such lots or tombs during their joint lives, and the survivor of them during his life. The persons in possession, care and control of such lots or tombs may erect a monument and make other permanent improvements thereon. The surviving spouse shall have a right of permanent interment for his own body in such lot or tomb, but it may be removed therefrom to some other family lot or tomb with the consent of the heirs. If two or more persons are entitled to the possession, care and control of such lot or tomb, they shall designate in writing to the clerk of the corporation, or if it is a tomb or lot in a public cemetery, to the board of cemetery commissioners, if any, or to the town clerk, which of their number shall represent the lot; and in default of such designation, the board of trustees or directors of the corporation, the board of cemetery commissioners, if any, or the board of health if such lots or tombs are in public cemeteries in towns, shall enter of record which of said persons shall represent the lot during such default. The surviving spouse may release his right in such lot, but no conveyance or devise by any other person shall deprive him of such right.

Amended by St.1978, c. 110.

§ 30. Hearing as to representation

Before entering of record the name of any person to represent such lot or tomb, the board of cemetery commissioners, if any, or the board of health of a town shall hear the parties entitled to the control thereof at such time and place as it shall have previously appointed by a notice published in a newspaper, if any, of the town; otherwise, by posting a copy in a public place therein.

§ 31. Descent of family lot to heirs

If in a will no express disposition or other mention is made of a cemetery lot owned by the testator at his decease, and wherein he or any member of his family is buried, the ownership of the lot shall not pass from his lawful heirs by any residuary or other general clause of the will, but shall descend to his heirs, as if he had died intestate.

§ 32. Right of wife to interment; release

A wife shall be entitled to a right of interment for her own body in any burial lot or tomb of which her husband was seized at any time during coverture, which shall be exempt from the operation of the laws regulating conveyance, descent and devise, but may be released by her in the same manner as dower.

§ 33. Right of husband to interment

A husband shall have the same rights in the tomb or burial lot of his wife as a wife has in that of her husband.

§ 34. Use of land for burial; new cemeteries or extensions; approval of board of health; description of land

Except in the case of the erection or use of a tomb on private land for the exclusive use of the family of the owner, no land, other than that already so used or appropriated, shall be used for burial, unless by permission of the town or of the mayor and aldermen of the city in which the same lies; but no such permission shall be given until the location of the lands intended for such use has been approved in writing by the board of health of the town where the lands are situated after notice to all persons interested and a hearing; and the board of health, upon approval of the use of any lands either for new cemeteries or for the extension of existing cemeteries, shall include in the records of the said board a description of such lands sufficient for their identification. For every interment in violation of this section in a town in which the notice prescribed in section thirty-seven has been given, the owner of the land so used shall forfeit not less than twenty nor more than one hundred dollars.

§ 35. Lands to be used for burial; approval

No land other than that so used and appropriated on April tenth, nineteen hundred and eight, shall be used for the purpose of burial if it be so situated that surface water or ground drainage therefrom may enter any stream, pond, reservoir, well, filter gallery or other water used as a source of public water supply, or any tributary of a source so used, or any aqueduct or other works used in connection therewith, until a plan and description of the lands proposed for such use have been submitted to, and approved in writing by the department of environmental quality engineering.

Amended by St.1975, c. 706, § 190.

§ 36. Appeal from order of board of health; hearing

Any person, including those persons in control of any public land, or the officers of any municipality, aggrieved by the action of a board of health in approving the purchase, taking or use of any lands for cemetery purposes may, within sixty days, appeal from the order of said board to the department of environmental quality engineering, and said department may, after a hearing, rescind such order or may modify and amend the same by approving a part of the lands so proposed for such use.

Amended by St.1975, c. 706, § 191.

§ 37. Regulations by local boards of health; notice

Boards of health may make regulations concerning burial grounds and interments within their towns; may impose penalties not exceeding one hundred dollars for a breach thereof; may prohibit the use by undertakers, for the purpose of speculation, of tombs as places of deposit for bodies committed to them for burial; and may close any tomb, burial ground, cemetery or other place of burial within the town for such time as they consider necessary for the protection of the public health. Notice of such regulations shall be given by publishing them in a newspaper, if any, of the town; otherwise, by posting a copy in a public place therein. Such publication shall be notice to all persons.

§ 38. Closing of tombs, burial ground or cemetery; hearing; notice

Before a tomb, burial ground or cemetery is closed by order of the board of health for more than one month, all persons interested shall have an opportunity to be heard, and personal notice of the time and place of hearing shall be given to at least one owner of the tomb, and to three at least, if there are so many, of the owners of such burial ground or cemetery, and notice shall be published for at least two successive weeks preceding such hearing in two newspapers published in the county.

§ 39. Appeal from order of board

The owner of a tomb aggrieved by an order of the board of health closing a tomb, burial ground or cemetery may, within six months after the date thereof, appeal therefrom to the superior court, first giving written notice to the board fourteen days before the entry of such appeal; but the order of the board shall remain in force until the appeal has been determined.

§ 40. Jury trial; rescission of order; costs and double costs

Appeals shall be tried before a jury, and if the jury find that the tomb, burial ground or cemetery so closed was not a nuisance or injurious to the public health at the time of the order and that the closing thereof was not necessary for the protection of the public health, the court shall rescind such order so far as it affects such tomb, burial ground or cemetery, and the appellant may recover the costs of the appeal from the town where the tomb, burial ground or cemetery was situated. If the order is sustained, the board of health shall recover double costs, to the use of the town.

§ 41. Laying out or constructing public ways in, upon or through burial places; authority

A public way shall not be laid out or constructed in, upon or through an enclosure used or appropriated for a burial place except by special authority from the general court or with the previous consent of the inhabitants of the town where such enclosure is situated; or, if such enclosure belongs to private proprietors, with their previous consent.

§ 42. Passage through cemeteries

Whoever uses as a means of passage from one point to another, not being thereupon at the time for any other purpose, the premises of a cemetery or burial place, in any other parts thereof than the defined ways, paths and walks, shall be punished by a fine of not more than twenty dollars.

§ 42A. Visitation hours

No cemetery exempted from taxation under the provisions of section five of chapter fifty-nine shall be closed for visitations between the hours of eight o'clock antemeridian and sunset, except during the months of June, July, August and September when such cemeteries shall remain open until the hour of seven o'clock postmeridian; provided, however, that the provisions of this section shall not apply on Saturdays if the cemetery is owned or used exclusively by a religious denomination which observes the Sabbath on Saturday. It shall be deemed to be a violation of this section if entrance to or exit from any such cemetery by motor vehicle is prevented during said hours, if said cemetery has accessible roads for motor vehicles; provided, however, that access by motor vehicle may be prevented on the second Sunday in May, the last Monday in May, and on Easter Sunday. Whoever wilfully violates this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1969, c. 268. Amended by St.1970, c. 285.

§ 42B. Commercial use of cemeteries for motion pictures; consent; penalties

No person shall use the premises of a cemetery or burial place for the purpose of making a motion picture film for commercial purposes without the previous consent of the mayor or the board of selectmen of the city or town in which such cemetery or burial place is located. Whoever violates the provisions of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months.

Added by St.1970, c. 415.

§ 43. Erection of buildings upon burial places

No building shall be erected upon any burial place belonging to a city, except by special authority from the general court, or with the previous consent of the city council.

MISCELLANEOUS PROVISIONS

§ 43A. Ownership, maintenance and operation of cemeteries; private profit

No cemetery established on or after July first, nineteen hundred and thirty-six, shall be owned, maintained or operated except by a municipality or other political subdivision of the commonwealth, a church, a religious or charitable society, or by a cemetery association incorporated as provided in section one, nor shall such a cemetery be maintained or operated for the purpose of private profit or gain, directly or indirectly, to any director, officer or member of the cemetery association or other agency owning, maintaining and operating the same. A cemetery lawfully established prior to said date may continue to be owned, maintained and operated under the form of organization adopted therefor.

Added by St.1936, c. 319, § 6.

§ 43B. Sale of cemetery lots and plots for speculative purposes

The sale of cemetery lots and plots, or the sale of crypts in a community mausoleum or niches in a columbarium, for speculative purposes, or the conveyance of any portion of a cemetery already dedicated to burial purposes as security for debt, is hereby prohibited, and every such conveyance shall be void and of no effect. Whoever makes or attempts to make a sale or conveyance contrary to the provisions of this section shall be subject to the penalty provided by section forty-three N.

Added by St.1936, c. 319, § 6.

§ 43C. Disposition of proceeds of sales; liquidation of indebtedness

The proceeds of the sales of lots and plots in a cemetery shall, except as hereinafter provided, be applied solely to the improvement and maintenance of the cemetery and the avenues, paths and structures situated therein, for the purchase of additional cemetery land, and for the accumulation of a permanent care and improvement fund. If any indebtedness of a fixed amount is incurred in the purchase of lands for such cemetery, or in making any improvement therein, a sum not exceeding fifty per cent of the gross receipts from the sale of burial lots and plots may be applied to the liquidation of such indebtedness. All moneys received from the sale of personal property and surplus real estate of a cemetery shall be applied first to the liquidation of any fixed indebtedness incurred by it on account of the purchase or improvement of the lands dedicated to cemetery purposes, and any residue remaining after the liquidation of such indebtedness shall be deposited in the permanent care and improvement fund of the cemetery. The provisions of this section shall not apply to any cemetery established prior to July first, nineteen hundred and thirty-six, or to any cemetery owned, maintained and operated by a church or religious society.

Added by St.1936, c. 319, § 6.

§ 43D. Location of community mausoleums controlled by churches and religious societies

Every community mausoleum, other than a structure containing crypts erected or controlled by a church or a religious society and used only as a repository for the remains of the clergy or dignitaries of such church or religious society, and every crematory, columbarium or other structure, other than a columbarium located within a building owned or occupied by a church or religious society in which regular religious services are held and used only as a repository for the ashes of the regular attendants at such religious services and their families, intended to dispose of or hold or contain the bodies or remains of the dead, erected on or after July first, nineteen hundred and thirty-six, shall be located only within the limits of a cemetery containing no less than twenty acres, which shall have been in existence and actually used for burial purposes for a period of at least five years immediately preceding the time of the erection thereof.

Added by St.1936, c. 319, § 6. Amended by St.1972, c. 32.

§ 43E. Erection of community mausoleums; plans and specifications; approval; construction

No community mausoleum, the crypts of which are available to the public for burial purposes, shall be erected without the consent and approval of the department of public environmental quality engineering. Before commencing the erection of any such structure, full detailed plans and specifications shall be presented to said department for its approval. Such approval shall be evidenced by a certificate in writing, signed by the proper officer of said department. No community mausoleum or any structure intended to hold or contain the bodies of the dead permanently, which is available to the public for said use, shall be erected or added to, and no building not previously used or intended to be used for the permanent disposition of the human dead shall be altered or changed for such use or used for such purposes, unless constructed of such materials and workmanship as will insure its durability and permanence as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science.

Added by St.1936, c. 319, § 6. Amended by St.1975, c. 706, § 192.

§ 43F. Community mausoleums; construction; supervision

The department of environmental quality engineering shall have supervisory control over the erection of any such community mausoleum and shall enforce compliance with the approved plans and specifications therefor. Said department shall appoint an inspector, experienced in modern mausoleum construction and engineering science, to supervise the erection of any such mausoleum and said department shall determine the reasonable amount of compensation of said inspector, which compensation shall be paid by the cemetery association or other agency erecting such community mausoleum. No departure from the original plans and specifications shall be permitted, except upon approval of said department evidenced in like manner and form as the approval of the original plans and specifications.

Added by St.1936, c. 319, § 6. Amended by St.1975, c. 706, § 193.

§ 43G. Use of community mausoleum prior to completion; care and improvement fund

No community mausoleum, crypt or structure erected as aforesaid shall be used for the purpose of depositing therein the remains of any dead body until such mausoleum, crypt or structure, or a component section thereof, is fully completed, and the permanent care and improvement fund required by section forty-three J has been established.

Added by St.1936, c. 319, § 6.

§ 43H. Sale of community mausoleum prior to completion

No crypt in a community mausoleum shall be sold or offered for sale before said structure, or a component section thereof, is fully completed.

Added by St.1936, c. 319, § 6.

§ 43*I*. Removal of bodies constituting menace to public health

Whenever any mausoleum, vault, crypt or other structure containing one or more dead human bodies shall, in the opinion of the department of public health, become a menace to public health, and the owner thereof fails to remedy or remove the same to the satisfaction of said department, any court of competent jurisdiction may order the owner of said structure to remove such dead body or bodies for interment in some suitable cemetery at the expense of such owner. If such owner cannot be found, such removal and interment shall be at the expense of the cemetery association or other agency in the cemetery of which such mausoleum, vault, crypt or other structure is situated.

Added by St.1936, c. 319, § 6.

§ 43J. Permanent care and improvement fund for community mausoleums

Every cemetery association or other agency establishing, maintaining and operating a community mausoleum on or after July first, nineteen hundred and thirty-six, shall create and establish a permanent care and improvement fund, distinct and separate from the permanent care and improvement fund of its cemetery. The fund established under authority of this section shall be created by applying to such fund at least thirty per cent of the proceeds received, in full or in instalments, from the sales of crypts in such mausoleum. The income of such fund shall be devoted to the care, maintenance and improvement of such community mausoleum.

Added by St.1936, c. 319, § 6.

§ 43K. Custodian of fund; administration and investment

The treasurer of the cemetery in which such community mausoleum is situated shall be the custodian of the permanent care and improvement fund established therefor as aforesaid and every such fund shall be held, administered and invested in the manner provided by law for funds in savings banks of the commonwealth.

Added by St.1936, c. 319, § 6.

§ 43L. Abating or enjoining nuisance

Any cemetery, community mausoleum or columbarium established, maintained or operated in violation of or contrary to any provision of this chapter shall be a nuisance and may be abated or enjoined as such at the suit of any taxpayer of the commonwealth.

Added by St.1936, c. 319, § 6.

§ 43M. Permanent disposition of dead bodies or remains

Except as otherwise provided by law, or in case of a dead body being rightfully carried through or removed from the commonwealth for the purpose of burial or disposition elsewhere, every dead body of a human being dying within the commonwealth, and the remains of any body after dissection therein, shall be decently buried, entombed in a mausoleum, vault or tomb or cremated within a reasonable time after death. The permanent disposition of such bodies or remains shall be by interment in the earth or deposit in a chamber, vault or tomb of a cemetery owned, maintained and operated in accordance with the laws of this commonwealth, by deposit in a crypt of a mausoleum, or by cremation. The remains of a human body after cremation may be deposited in a niche of a columbarium or a crypt of a mausoleum, buried or disposed of in any manner not contrary to law. No deposit of the bodies or remains of the human dead shall be made in a single chamber, vault or tomb wholly or partly above the natural surface of the ground unless the part thereof below such surface is of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, waterproof and air tight, and capable of being sealed permanently to prevent all escape of effluvia, and unless the part thereof above the natural surface of the ground is constructed of natural stone of a standard not less than that required by the United States government for monuments erected in national cemeteries, of durability sufficient to withstand all conditions of weather.

Added by St.1936, c. 319, § 6.

§ 43N. Penalties

Whoever fails to comply with or violates any provision of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium, or to the disposal of dead human bodies, shall, unless another penalty is provided by this chapter, be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1936, c. 319, § 6.

§ 43*O*. Sale of monuments for cemetery lots by cemetery corporations

The following corporations owning or operating cemeteries shall not sell or engage in the business of selling monuments for cemetery lots:—Municipal corporations, cemetery corporations organized under general laws, and cemetery corporations organized by acts of incorporation passed since March eleventh, eighteen hundred and thirty-one. This act shall be deemed an amendment of any charters heretofore granted except charters in which the right to sell monuments is expressly conferred. This act shall not prohibit the sale by any of said corporations of monuments in their possession prior to the effective date of this act.

Added by St.1948, c. 497.

CREMATION AND BURIAL

§ 44. Cremation of bodies

The body of a deceased person shall not be cremated within forty-eight hours after his decease unless he died of a contagious or infectious disease, and, if the death occurred within the commonwealth, the body shall not be received or cremated by any corporation authorized to cremate the bodies of the dead until its officers have received the certificate or burial permit required by law before burial, and a certificate from a medical examiner that he has viewed the body and made personal inquiry into the cause and manner of death, and is of opinion that no further examination or judicial inquiry concerning the same is necessary. If the death occurs without the commonwealth, the reception and cremation of the body of a deceased person shall be governed by a by-law or regulation made or approved by the department of public health as provided by section nine.

§ 44A. Receptacles for cremated remains; caskets

The body of a deceased person to be cremated shall be contained in a suitable receptacle; provided, however, that a casket shall not be used for such cremation unless such use has been requested by a person lawfully entitled to the custody and control of such body.

Added by St.1978, c. 230.

§ 45. Burial permits; permits for removal of bodies; certificates of death; deceased veterans

Except as provided in sections forty-four and forty-six, no undertaker or other person shall bury or otherwise dispose of a human body in a town, or remove therefrom a human body which has not been buried, until he has received a permit from the board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the town where the person died; and no undertaker or other person shall exhume a human body and remove it from a town, from one cemetery to another, or from one grave or tomb other than the receiving tomb to another in the same cemetery, until he has received a permit from the board of health or its agent aforesaid or from the clerk of the town where the body is buried. No such permit shall be issued until there shall have been delivered to such board, agent or clerk, as the case may be, a satisfactory written statement containing the facts required by law to be returned and recorded, which shall be accompanied, in case of an original interment, by a satisfactory certificate of the attending physician, if any, as required by law, or in lieu thereof a certificate as hereinafter provided. If there is no attending physician, or if, for sufficient reasons, his certificate cannot be obtained early enough for the purpose, or is insufficient, a physician who is a member of the board of health, or employed by it or by the selectmen for the purpose, shall upon application make the certificate required of the attending physician. If death is caused by violence, the medical examiner shall make such certificate. If such a permit for the removal of a human body, not previously interred, from one town to another within the commonwealth cannot be obtained early enough for the purpose, the certificate of death made as above provided and in the possession of the undertaker desiring to make such removal shall constitute a permit for such removal; provided, that such body shall be returned to the town from which it was removed within thirty-six hours after such removal, unless a permit in the usual form for the removal of such body has been sooner obtained hereunder. If the death certificate contains a recital, as required by section ten of chapter forty-six, that the deceased was a veteran, such recital shall appear upon the permit. The board of health or its agent, upon receipt of such statement and certificate, shall forthwith countersign it and transmit it to the clerk of the town for registration. The person to whom the permit is so given and the physician certifying the cause of death shall thereafter furnish for registration any other necessary information which can be obtained as to the deceased, or as to the manner or cause of the death, which the clerk or registrar may require.

Amended by St.1954, c. 627, § 26.

§ 45A. Use of name of funeral director in connection with death certificate or burial permit

No funeral director, whether doing business as an individual, partnership or corporation, shall permit his name to be used in connection with any death certificate or burial permit unless he was specifically engaged to perform the burial to which such permit or certificate relates.

Any violation of this section shall be punished by a fine of fifty dollars.

Added by St.1954, c. 438.

§ 46. Permit for burial of bodies brought into commonwealth; certificate; recording

Whenever a dead body is brought into the commonwealth for burial, accompanied by a removal permit issued under the laws of the state from which such body is brought, such permit shall be received as sufficient authority for burial, and the superintendent or person or persons in charge of the cemetery where the burial is to take place shall make proper endorsements on said removal permit and send it forthwith to the local board of health in the city or town where said cemetery is located. The board of health shall make and retain a copy of said removal permit and return the original to the city or town issuing the same; but if not accompanied by such permit no funeral director or other person shall bury such body or the ashes thereof until he has received a permit so to do from the board of health or its agent appointed to issue such permits, or if there is no such board, from the clerk of the town where the body is to be buried, or from a person appointed to have the care of the cemetery or burial ground in which the interment is made, if a record is kept of the names of all persons buried therein, or from a duly appointed superintendent of burials in such town who keeps a record of interments. Such permit shall not be issued until the funeral director or other person has delivered a certificate to said board, agent, clerk, superintendent or person having such care, giving the name of the deceased, his age as nearly as can be ascertained, the cause of death, the name of the town where he last resided or from which the body was brought, or, if the death occurred at sea, the name of the vessel upon which it occurred, and any other facts required for record which could be obtained with reasonable diligence, including, in case the deceased was a veteran, a recital as required by section ten of chapter forty-six.

The board of health or its agent, or the superintendent or person having such care, shall, upon receipt of such certificate, forthwith countersign it and file it in his office.

Amended by St.1954, c. 627, § 27; St.1958, c. 465; St.1968, c. 34.

§ 46A. Burial of bodies of veterans; affidavit; veteran graves officer

No permit for the burial or other disposition of the body of a deceased veteran, known to be such, as the term veteran is defined in section twenty-one of chapter thirty-one, shall be issued unless and until an affidavit, as hereinafter set forth, shall have been filed with the board of health, or body or person having similar powers and duties, issuing such permit, by the undertaker or other person authorized to make such burial or disposition. Such affidavit shall set forth, as far as is known to the person executing it, the name and last known address of the deceased, the date and place of his or her birth, the date, place and cause of his or her death, a summary of his or her service record, and a detailed statement of the location of the burial or other disposition of his or her body.

A certified copy of the affidavit shall forthwith be transmitted by such board, body or person to the veteran graves officer, appointed under section nine of chapter one hundred and fifteen, of the city or town of burial or other disposition of the body. Upon receipt of such certified copy, said veteran graves officer shall, if said deceased veteran did not have his settlement in such city or town, thereupon transmit a copy of such affidavit to the veteran graves officer of the city or town in which said deceased veteran had his settlement, and in the event that said deceased veteran had no settlement in the commonwealth and was not a resident of the city or town of burial or other disposition, a copy of such affidavit shall be transmitted to the veteran graves officer of the city or town where said deceased veteran last resided.

Added by St.1949, c. 604. Amended by St.1957, c. 86.

§ 47. Certificates for burial; indorsement; record; service of deceased as veteran

No person having the care of a cemetery, burial ground or crematory shall permit the burial, removal or cremation of a human body until the permit for such burial, removal or cremation has been delivered to him, nor permit the ashes of a human body to be buried therein until there has been delivered to him a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented.

Upon the burial, removal, or cremation of a body, the superintendent or other officer in charge of the cemetery or crematory shall indorse upon the coupon accompanying the permit the fact of such burial, removal or cremation, with the date thereof, shall make and preserve in the files of the cemetery or crematory a record of such burial, removal or cremation, including any recital in the burial permit relative to service of the deceased as a veteran as defined in section ten of chapter forty-six, and also the location of the grave or other receptacle of the body or ashes of the deceased, and shall forthwith return the coupon to the office issuing the same; provided, that if there is no officer in charge of the cemetery or crematory, such duties shall be performed by the undertaker.

Amended by St.1954, c. 627, § 28.

§ 48. Burial of ashes of human body; certificates for burial

An undertaker shall not bury the ashes of a human body until he has received from the person having the charge of the crematory a certificate that the burial permit and the certificate of the medical examiner prerequisite to the cremating of said body have been duly presented.

§ 49. Licensing of funeral directors; revocation or suspension; hearing; permits

The board of health of each town shall annually, on or before May first, license persons to act as funeral directors therein upon such terms and conditions as the board of registration in embalming and funeral directing, established by section twenty-nine of chapter thirteen, shall prescribe. All such licenses shall expire April thirtieth each year, unless sooner suspended or revoked. Such licenses shall be issued only to persons certified to the boards of health by said board of registration, before May first each year, as qualified to be licensed as funeral directors. Any license hereunder may, after a hearing, be revoked by the board of health which issued it for any violation of law, local ordinances or the rules and regulations of said board of health, said board of registration or the state department of public health.

Boards of health shall send to said board of registration, immediately upon the issuance of licenses hereunder, the names and addresses of the persons to whom such licenses were issued.

A person registered and licensed as a funeral director may act as a funeral director in any town; provided, that, unless licensed as a funeral director by the board of health of a town, no person shall establish or maintain in such town a place of business or office or agency, or display in such town any sign indicating that he is licensed therein as an undertaker, funeral director or mortician, or hold himself out in such town as a funeral director without clearly indicating the town wherein he is so licensed.

The board of health of a town shall issue a permit for the continuance therein, under the active supervision of a person licensed as a funeral director in any town, of the business of a funeral director licensed by such board who has died, for the benefit of the estate or persons interested in the estate of the decedent, during such period of time and in such a manner and under such conditions as such board may determine.

Amended by St.1936, c. 407, § 4; St.1939, c. 160, § 3.

§ 50. Penalty

Violations of any of the provisions of sections forty-four to forty-eight, inclusive, shall be punished by a fine of not more than fifty dollars.

EMBALMING FLUIDS

§ 51. Sale of embalming fluid

No person shall sell, offer for sale, or supply others with any embalming fluid, or any substitute therefor, which contains more than five milligrams of arsenic per litre. Violation of any provision of this section shall be punished by a fine of one thousand dollars or by imprisonment for one year, or both.

Added by St.1955, c. 472. Amended by St.1958, c. 148.

TITLE XVII

PUBLIC WELFARE

CHAPTER 117

SUPPORT BY THE COMMONWEALTH

Sec.
1. Support of poor and indigent.
2. Definitions.
2A. Aid to residents of disaster areas; application procedures; disaster relief coordinator; reimbursement.
7. Placing persons in unlicensed institutions; prohibition; penalty.

§ 1. Support of poor and indigent

The commonwealth, acting by and through the department of public welfare, shall provide assistance to residents of the commonwealth found by the department to be eligible for such assistance in accordance with this chapter. Such assistance shall be granted from the date of application therefor and shall not, in any form or manner, include the purchase of furniture. Such assistance shall include payment for such drugs and medication as are necessary to sustain life, in accordance with regulations adopted by the department, provided that the department shall require the use of such generic drugs as are available and appropriate.

Effective July first of every year, subject to appropriation, the department shall increase the total budget of each eligible recipient, before taking into consideration any available income and resources, by a percentage amount equal to the percentage rise in the United States Consumer Price Index for January first of that year over the level of said index for January first of the previous year plus such additional percentage amount as is recommended annually by the department and appropriated by the general court.

Added by St.1971, c. 908. Amended by St.1972, c. 569; St.1974, c. 623, § 2; St.1975, c. 531, § 1; St.1975, c. 618, § 1; St.1975, c. 684, § 25D; St.1975, c. 758, § 1.

§ 2. Definitions

The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

(*a*) "Department", the state department of public welfare.

(*b*) "Reside", to occupy, and have an established place of abode with no present intention of definite and early removal, but not necessarily with the intention of remaining permanently; provided, however, that confinement of a person in any nursing home, hospital or other medical institution in the commonwealth shall not, in and of itself, be sufficient evidence to qualify such person as a resident under this chapter.

(*c*) "Institution", any hospital, sanatorium, boarding or rest home, or convalescent or nursing home, for the operation of which a license is required by law; any facility conducted by an agency incorporated under chapter one hundred and eighty or any special act as a charitable corporation; and any facility operated by municipal, county, state and federal government.

(*d*) "Student", a person regularly attending a school, college or university or regularly attending a course of vocational or technical training, all beyond the level of secondary education.

Added by St.1971, c. 1001.

§ 2A. Aid to residents of disaster areas; application procedures; disaster relief coordinator; reimbursement

Notwithstanding the requirements of any section of this chapter to the contrary, the department, subject to appropriation, may assist any applicant residing in an area which has been designated a disaster area as determined by the President of the United States pursuant to section 102 of the Disaster Relief Act of 1970, 42 U.S.C. 4402(1)[1] where such assistance is not immediately available through other federal, state or local agencies.

For the purposes of this section, the department shall establish application procedures to most readily facilitate the furnishing of such assistance to residents of a disaster area and shall establish standards for assistance to best alleviate the hardship of such applicants. The director of each office operated by the department shall designate a member to serve as a disaster relief coordinator. The disaster relief coordinator shall cooperate with other agencies in the furnishing of disaster assistance to eligible persons and maintain liaison with private charitable organizations providing similar assistance.

The department may require reimbursement from recipients whose losses have been compensated for by insurance or otherwise to the extent to which the recipients themselves have been reimbursed. The department may also seek funds from federal agencies or programs, where available, as reimbursement for funds expended in this section.

Added by St.1974, c. 533. Amended by St.1978, c. 250.

[1] 42 U.S.C.A. § 4402(1).

§ 7. Placing persons in unlicensed institutions; prohibition; penalty

No person dependent on public support shall be placed by the department or by any veteran's agent, board of health, or other public authority, in any hospital, nursing home, infirmary or institution not operated by the commonwealth which is not licensed as required by chapter one hundred and eleven. Any person violating the provisions of this section shall be punished by a fine of not less than twenty-five or more than one hundred dollars.

Added by St.1971, c. 908.

CHAPTER 118

AID TO FAMILIES WITH DEPENDENT CHILDREN

Sec.
1. Definitions.
11. Institutions furnishing care; application for aid; assignment of certain funds.

§ 1. Definitions

The following words and phrases as used in this chapter, unless the context otherwise requires, shall have the following meanings:

"Dependent child", a needy child who has been deprived of parental support or care by reason of the death, continued absence from the home, physical or mental incapacity or the unemployment of a parent, and who is living with his father, mother or other parent in a place of residence maintained by one or more of such relatives as his or their own home and who is under the age of eighteen or under the age of twenty-one and a student regularly attending a school, college or university or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

"Parent", shall include, in addition to the father and mother of the dependent child, the following:—stepfather, stepmother, stepbrother, stepsister; any blood relative, including those of the half blood, except cousins who are more distantly related than first cousins; adoptive relative of equal propinquity to the foregoing; and spouses of any such persons.

"Aid to families with dependent children", money payments with respect to families with a dependent child or children.

"Department", the department of public welfare.

Added by St.1936, c. 413, § 1. Amended by St.1939, c. 487; St.1952, c. 463; St.1957, c. 430; St.1963, c. 432, § 5; St.1967, c. 658, § 27.

§ 11. Institutions furnishing care; application for aid; assignment of certain funds

If a parent or dependent child requests care at an institution, as defined in section two of chapter one hundred and eighteen E, the institution furnishing such care may initiate an application on behalf of the parent or dependent child to the department and the department shall accept the application and act thereon. Such institution shall be entitled to notice, hearing and right of appeal in the same manner as an applicant or recipient, as provided in section eight.

Payment for such care shall be made, to the extent allowed by rules and regulations of the Secretary of Health, Education and Welfare, if an applicant dies before approval of his application. Payment for such medical care and hospitalization, including nursing home care, shall be paid, subject to the rules and regulations of the department and the rules and regulations of the Secretary of Health, Education and Welfare, for a reasonable period not to exceed thirty days prior to the date of application on account of said services actually rendered.

If relief or support under this chapter is necessary as a result of an accident, injury or illness for which moneys are expected to be provided by accident or health insurance, workmen's compensation or otherwise, the department shall require the person in need of such relief or support to provide for the reimbursement of the commonwealth for each day of such relief or support by assigning to the commonwealth an equivalent amount of the money to be so realized for such day; but such assignment shall not operate as a lien on moneys to be so realized for any day for which relief or support is not provided. Such assignment may be enforced by petition to a district court within the jurisdiction in which the person resides. Proceeds realized through the enforcement of this section shall be apportioned between the federal government and the commonwealth in proportion to the amount of their respective contributions thereto, but in no case for more than the amount contributed, without interest.

Added by St.1961, c. 487. Amended by St.1966, c. 498, § 1; St.1967, c. 658, §§ 35, 36; St.1969, c. 885, § 22; St.1973, c. 1210, § 22.

CHAPTER 118A

ASSISTANCE TO THE AGED AND DISABLED

7A. Special grants to recipients residing in rest homes.

§ 7A. Special grants to recipients residing in rest homes

The department may provide to any recipient under this chapter who resides in a rest home which has a rate established pursuant to section thirty L of chapter seven[1] a special grant whenever the aid provided under this chapter is insufficient to meet said rate established for such rest home. The department may pay such grant either to the recipient or to the rest home.

Added by St.1973, c. 1210, § 23.

[1] Repealed by St.1973, c. 1229, § 4. See, now, c. 6A, § 32.

CHAPTER 118E

MEDICAL CARE AND ASSISTANCE

Sec.

1. Eligibility.
2. Definitions.
3. Cooperation with federal authorities.
4. Administration of program; rules; withdrawals from program; violations.
5. Medical assistance payments; review.
6. Financial assistance.
7. Methods of prior approval of medical services; rules and regulations; post-treatment examinations.
8. Application; forms; application by institution.
9. Inquiry by department; notification of applicant; federal agreement.
10. Exempt income and resources.
11. Identification card.
12. Redetermination of eligibility.
13. Transfer of property; ineligibility for assistance.
14. Time of payment.
15. Children.
16. Recovery of payments.
17. Liens and encumbrances; third party liability.
18. Providers of services, participation in program.
19. Distribution of rules, regulations etc.
20. Submission of bills; verification; perjury; inspection of records.
21. False representations, penalty.
22. Persons aggrieved; right to hearing, investigation; decision; rehearing; notice.
23. Use and disclosure of information.
24. Repealed.
25. Contract for administrative functions; underwriting of program.
26. Utilization review of care and services; data processing.
27. Maintenance of standards for providers; development of new programs.

§ 1. Eligibility

There is hereby established, pursuant to and in conformity with the provisions of Title XIX of the Social Security Act (P.L. 89–

97) [1], a program of medical care and assistance for certain residents of the commonwealth.

The benefits of the program shall be available to all persons eligible for financial assistance under the provisions of chapter one hundred and eighteen and to all persons who are eligible for supplemental security income payments on account of age or disability under the provisions of title XVI of the federal Social Security Act [2] or for assistance under the provisions of chapter one hundred and eighteen A. The benefits of the program shall also be available to all others who would be eligible for financial assistance under any of the foregoing provisions but for income or resources, provided they meet the requirements of financial eligibility under the program hereinafter set forth, and to all children under eighteen years of age, and adults eighteen, nineteen and twenty years of age whose income and resources are insufficient to meet the costs of their medical care as determined by the financial eligibility requirements of said program. The benefits of the program shall also be available to any person who receives "vocational rehabilitation services" as defined by section seventy-seven of chapter six for at least fourteen hours per week to carry out routine bodily functions, dressing, preparation and consumption of food, moving into or out of bed, routine bed baths ambulation, or any other function of daily living.

Added by St.1969, c. 800, § 1. Amended by St.1973, c. 925, § 38; St.1973, **c. 1210, § 25; 1979, c. 599.**

[1] 42 U.S.C.A. § 1396 et seq.
[2] 42 U.S.C.A. § 1381 et seq.

§ 2. Definitions

As used in this chapter the following terms and phrases shall, unless the context clearly requires otherwise, have the following meanings:

(*a*) "Person", any individual who resides in the commonwealth, or any individual residing outside the commonwealth who is deemed to be a resident of the commonwealth under the regulations of the Secretary promulgated under the Social Security Act of 1966 with respect to medical services.

(*b*) "Department", the department of public welfare.

(*c*) "Reside", to occupy an established place of abode with no present intention of definite and early removal, but not necessarily with the intention of remaining permanently, but in no event shall the word "reside" be construed more restrictively or less restrictively than as defined by the Secretary under said Title XIX [1]. Confinement of a person in any nursing home, hospital, or other medical institution in the commonwealth shall not, in and of itself, be sufficient evidence to qualify such person as a resident under this chapter.

(*d*) "Institution", any licensed hospital, any licensed nursing home, or any public medical institution which meets the requirements of the Secretary.

(*e*) "Public medical institution", any medical institution supported in whole or in part by public funds, either federal, state or municipal staffed by professional, medical and nursing personnel and providing medical care, in accordance with standards established through licensing or approval by the department of public health.

(*f*) "Medical assistance", payment by the department of all or part of the cost of the medical care and services enumerated in section six.

(*g*) "Provider", any institution, agency, person or group qualified under the laws of the commonwealth to perform or provide the medical care or services enumerated in section six.

(*h*) "Secretary", the Secretary of the United States Department of Health, Education and Welfare.

Added by St.1969, c. 800, § 1.

[1] 42 U.S.C.A. § 1396 et seq.

§ 3. Cooperation with federal authorities

The department shall, within the limits of the funds which have been appropriated for the purposes of this chapter, cooperate with the appropriate federal authorities in the administration of said Title XIX [1], under which funds are available to the commonwealth for a medical assistance program, and accept for the commonwealth the benefits thereof. The state treasurer shall be the custodian of such funds allocated to the commonwealth.

Added by St.1969, c. 800, § 1.

[1] 42 U.S.C.A. § 1396 et seq.

§ 4. Administration of program; rules; withdrawals from program; violations

In administering the program the department shall formulate such methods, policies, procedures, standards and criteria, except medical standards and criteria, as may be necessary for the proper and efficient operation of the plan in a manner consistent with simplicity of administration and the best interests of the recipients.

The department may take such further action, consistent with law and within the limits of available funds appropriated for the purposes of this chapter, as may be necessary for, carrying out the purposes of this program in conformity with all requirements governing the allowance of federal grants-in-aid to the commonwealth under said Title XIX[1], including said provisions relative to notice and reimbursement, a uniform system of records and accounts to be kept by the welfare service offices and the manner and form of making reports to the department.

The department may adopt, promulgate, amend and rescind rules and regulations suitable or necessary to carry out the provisions of this chapter and said Title XIX and any amendments thereto, and as interpreted from time to time by the Secretary.

Such rules and regulations shall include provisions requiring providers of long term care services intending to withdraw from the medical care and assistance program established by this chapter to provide for the continuing care or appropriate relocation of the medical assistance recipients residing in their facilities.

The department may require any long term care provider expressing his intention to withdraw from said program whose facility is able to meet the standards for participation in said program to enter into a standard provider contract with the department under which the provider continues to provide services only to those patients residing in his facility at the time the provider announces his intention to withdraw who are eligible for medical assistance or who become eligible for medical assistance during the term of the contract. Such rules and regulations shall also provide that any such provider who has withdrawn from said program may not participate in said program for a period of time, not exceeding five years, specified in said regulations.

Such rules and regulations shall also provide that any long term care provider whose facility is unable to meet the standards for participation in said program shall continue to provide care to the medical assistance recipients residing in his facility until the provider has arranged for the complete relocation of all the medical assistance recipients residing in his facility in accordance with such rules and regulations and with the regulations of the department of public health.

Any provider who violates the provisions of this section by failing to provide care to a medical assistance recipient residing in his facility shall be subject to a fine of one thousand dollars for each violation.

The department shall make such reports as may be required by the Secretary.

Added by St.1969, c. 800, § 1. Amended by St.1977, c. 878, § 1.

[1] 42 U.S.C.A. § 1396 et seq.

§ 5. Medical assistance payments; review

The department shall furnish medical assistance to each eligible person residing in the commonwealth whose income and resources are insufficient to meet the costs of necessary medical services. Payment shall be made to the person or institution supplying medical services. Upon receipt of an application for medical assistance from a disabled individual who does not qualify for cash assistance under the provisions of chapter one hundred and eighteen A, the department shall determine whether said individual meets the definition of "disabled" in title XVI of the federal Social Security Act [1] and the regulations established thereunder.

Added by St.1969, c. 800, § 1. Amended by St.1973, c. 1210, § 26.

[1] 42 U.S.C.A. § 1381 et seq.

§ 6. Financial assistance

The department shall provide financial assistance for such medical care or services as said Title XIX [1] and regulations adopted thereunder by the secretary of health, education and welfare require; provided, that required hospital out-patient services may be performed in a clinic. The department may provide financial assistance for such additional medical care or services as said Title XIX and said regulations permit; provided, that the department shall provide financial assistance for at least intermediate care facility services, podiatrists' services, prescription authorized hearing aids, basic adult dental services, but not including orthodontry or cosmetic dentistry, eyeglasses for persons sixty-five years of age or older, and care for patients in mental or tuberculosis hospitals who are sixty-five years of age or older; and, provided further, that required hospital out-patient services may be performed by a clinic.

The amount, duration and scope of the aforesaid care and services shall be determined by the rules and regulations of the department, provided said rules and regulations are consistent with the provisions of this chapter and with said Title XIX, and any regulations adopted thereunder by the secretary.

Added by St.1969, c. 800, § 1. Amended by St.1971, c. 1084, § 2; St.1973, c. 1068, § 2; St.1975, c. 531, § 5; St.1975, c. 618, § 5; St.1975, c. 684, § 25F; St.1975, c. 751; St.1976, c. 283, § 31.

[1] 42 U.S.C.A. § 1396 et seq.

§ 7. Methods of prior approval of medical services; rules and regulations; posttreatment examinations

The department shall establish methods of approving services to be performed as a prerequisite to extending medical assistance. Said methods of prior approval shall include, but need not be limited to: (1) in the case of restorative dentistry, or dentures, examination of proposed recipients or of diagnostic information regarding proposed recipients by dental consultants of the department; (2) in the case of orthodontic services, procedures which assure that medical assistance will be provided only for severe, handicapping malocclusions; (3) in the case of transportation to obtain medical care, a statement from the attending physician certifying that such transportation is necessary due to a physical disability; and (4) procedures for any services for which prior approval was required under the regulations of the department as of July first, nineteen hundred and sixty-nine.

Assistance under this chapter for nursing services for persons twenty years of age or under shall be available after a medical review team under the supervision or with the approval of the department of public health, in cooperation with the departments of mental health and public welfare, approves such services for such persons. The department of public health, in cooperation with said other departments, shall promulgate rules and regulations for such services, and any person or facility offering such services shall receive prior certification from the department of public health.

The department shall establish methods of random posttreatment examination of recipients of medical care or services under this chapter in order to assure that the care or services for which the department is billed were actually performed as described.

Added by St.1969, c. 800, § 1. Amended by St.1971, c. 1084, § 3.

§ 8. Application; forms; application by institution

An application or reapplication by an individual for medical assistance shall be made to the department on forms prepared by the department. Such forms shall include but not be limited to the following:—the name, address and social security number of the applicant and the name, address and social security number of any member of the family sixteen years of age and older, the total income from wages, salaries, pensions, fees, tips, bonuses and all other sources of income of all such persons, the ownership and description of any motor vehicle or boat, or trailer, or similar assets readily convertible into cash owned by any member of the family. Such form shall require that the applicant provide information to determine his eligibility for medical assistance under penalty of perjury.

An institution furnishing medical assistance under this chapter shall have the right to make such application on behalf of an individual, or to intervene if such application is made, and in either event shall be entitled to notice, hearing and appeal in the same manner as an applicant. Nothing herein contained, however, shall be construed to grant to such institution any rights which supersede the rights of an applicant.

Added by St.1969, c. 800, § 1.

§ 9. Inquiry by department; notification of applicant; federal agreement

Upon receipt of such application the department shall make full inquiry concerning the eligibility of the applicant, his need for medical assistance and his resources and income, if any, and, promptly and within thirty days after receipt of such application, shall make its decision, which shall be entered into its records. At the time of such initial decision and in the event of any subsequent decision, the applicant or recipient shall be notified in writing of such decision and shall be informed of the reason therefor and of his right to appeal and of the method by which he may appeal under this chapter.

The department may enter into an agreement with the Secretary of the United States Department of Health, Education and Welfare, or with any federal or private agency, whereby said Secretary or agency shall determine on behalf of the department the eligibility for assistance under this chapter of all or certain applicants for such assistance.

Added by St.1969, c. 800, § 1. Amended by St.1973, c. 1210, § 27.

§ 10. Exempt income and resources

The following income and resources shall be exempt and shall neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical assistance available under this chapter:

(1) Monthly income in an amount not exceeding the level of the minimum dollar amount required under Title XIX [1];

(2) ownership of one's residence, including furniture, which is essential and appropriate to the needs of the household;

(3) personal property up to a sum of two thousand dollars for one person, three thousand dollars for two persons and one hundred dollars for each additional dependent member of the family. For the purposes of this chapter, personal property is defined as cash on hand, bank deposits, securities, cash surrender value of insurance policies, automobiles, boats or other similar assets readily convertible into cash;

(4) health insurance premiums;

(5) taxes, social security payments or, in the absence thereof, mandatory payments to a retirement system, union dues, and other reasonable and usual costs of earning wages as approved by the department; provided, however, that the latter shall be no greater than two dollars and fifty cents per week or eleven dollars per month;

(6) payments made pursuant to a court order for support of dependents;

(7) payments received under the provision of chapter one hundred and fifteen to the extent that such income exemption does not contravene the provisions of any general, special or federal law.

Notwithstanding a wage earner's failure to claim all allowable dependents for withholding tax purposes the department shall compute his net income for the purposes of determining eligibility, by determining the amount that actually would have been withheld if said wage earner had claimed all such allowable dependents.

Voluntary deductions shall be included in determining net income.

In any case where the monthly income of a recipient or beneficiary is in excess of the exemptions allowed, the recipient or beneficiary shall be liable to pay to the provider of medical care or service an amount which shall be equal to the excess income for a period of six consecutive months, which includes the period when such service was provided.

In determining responsibility of any individual for any applicant or recipient of assistance under this chapter, such responsibility shall be limited to a person for his spouse and parents for children under the age of eighteen.

Added by St.1969, c. 800, § 1. Amended by St.1972, c. 745; St.1972, c. 779; St.1973, c. 925, § 39; St.1977, c. 825, § 3.

[1] 42 U.S.C.A. § 1396 et seq.

§ 11. Identification card

The department shall issue a numbered identification card to persons receiving benefits under this chapter. Such card shall bear the date of issue and shall be presented to providers as verification of eligibility for services. The department shall establish by rules and regulations such procedures as may be necessary for the purpose of recalling identification on termination of eligibility.

Added by St.1969, c. 800, § 1.

§ 12. Redetermination of eligibility

If an individual has become eligible under this chapter, eligibility shall be reconsidered or redetermined:

(*a*) When required on the basis of information the department has obtained previously about anticipated changes in the individual's situation.

(*b*) Promptly within thirty days, after a report is obtained from any source which indicates that changes in the individual's circumstances may affect the amount of assistance to which he is entitled or may make him ineligible.

(*c*) Periodically, but at least once in every six months.

(*d*) If any recipient shall by gift, inheritance or other manner acquire additional assets during any twelve month interval following determination of his eligibility, he shall immediately report such acquisition to the department which shall immediately make a reevaluation of such recipient's eligibility.

Added by St.1969, c. 800, § 1.

§ 13. Transfer of property; ineligibility for assistance

Medical assistance shall not be granted to an applicant who, at any time within one year immediately prior to the filing of an application for medical assistance, has made an assignment or transfer of real or personal property for the purpose of rendering himself eligible for such assistance.

Added by St.1969, c. 800, § 1. Amended by St.1971, c. 826.

§ 14. Time of payment

When the department determines that an applicant is eligible for medical assistance, it shall pay for eligible care and service furnished on or after the date of application. The date of application for medical assistance of an individual who has applied for financial assistance under the provisions of chapter one hundred and eighteen A or section one hundred and thirty-one of chapter six, shall be deemed to be the date of application for such financial assistance, whether or not such financial assistance is granted. If consistent with title XIX of the federal Social Security Act [1] and the regulations established thereunder, the department shall pay for eligible care and services furnished to an eligible applicant during the three months immediately prior to the month in which he filed his application: provided, however, that, at the time such care or services are furnished to him, such applicant upon application would have been eligible for medical assistance pursuant to this chapter.

Added by St.1969, c. 800, § 1. Amended by St.1973, c. 1210, § 28.

[1] 42 U.S.C.A. § 1396 et seq.

§ 15. Children

In the cases of those children for whom the department has responsibility under and in accordance with chapter one hundred and nineteen and who are otherwise eligible therefor as determined by the department, medical assistance under this program shall be provided and paid for by the department.

Added by St.1969, c. 800, § 1.

§ 16. Recovery of payments

There shall be no adjustment or recovery of medical assistance correctly paid, except from the estate of an individual who was sixty-five years of age or older when he received such assistance, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age twenty-one or is blind or permanently and totally disabled.

In no event shall any action to recover be brought except with the written approval of the department. Proceeds realized through any such action shall be apportioned between the federal government and the commonwealth in proportion to the amount of their respective contributions thereto, but in no case for more than the amount contributed, without interest.

Added by St.1969, c. 800, § 1.

§ 17. Liens and encumbrances; third party liability

No lien or encumbrance of any kind except as may be permitted by the Secretary, shall be required from or imposed against the property of any individual prior to his death because of medical assistance paid or to be paid on his behalf except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of a recipient.

If medical care and services are provided under this chapter and arises out of injury, disease or disability for which a third party may be liable, the department shall require the person receiving such medical care and services to provide for the assignment to the commonwealth of the amounts so expended from the proceeds of any such claim against the third party.

Added by St.1969, c. 800, § 1.

§ 18. Providers of services, participation in program

Participation in the program shall be limited to providers of services who:

(1) indicate their intention to the department to so participate;

(2) present evidence, satisfactory to the department, of their qualifications to provide such services;

(3) agree to accept, as payment in full, the amounts paid in accordance with the fee schedules provided for under this chapter; and

(4) agree to comply with all laws, rules and regulations governing the operation of the program.

Added by St.1969, c. 800, § 1.

§ 19. Distribution of rules, regulations etc.

The department shall distribute to all providers a copy of the rules, regulations, standards and laws governing the medical assistance program established by this chapter and shall establish administrative sanctions against providers, including suspension from the program for a period not exceeding three years, for any violations of said rules, regulations, standards or laws. The department shall notify the proper professional society and licensing agency of any such violations.

Added by St.1969, c. 800, § 1.

§ 20. Submission of bills; verification; perjury; inspection of records

Providers shall submit a bill for goods sold or services rendered to the department not later than ninety days after the goods are sold or the services rendered, and the department shall verify no less than ten per cent of said bills with the recipient of said goods or services. The department shall require that the provider maintain proof, subject to audit, of the actual deliverance of services and goods to recipients for which bills are submitted. The department shall verify the accuracy of bills submitted under this section through the application of statistical sampling methods. Said bills shall be signed under the penalties of perjury; provided, however, that an institution, as defined in clause (*d*) of section two, may, in lieu of this requirement, agree in writing with the commissioner that its books and records will be available for inspection at all reasonable times by the department with respect to services rendered under any assistance program administered by the department.

Added by St.1969, c. 800, § 1. Amended by St.1970, c. 701, § 2; St.1975, c. 684, § 25H; St.1975, c. 758, § 3; St.1976, c. 283, § 29.

§ 21. False representations, penalty

Any provider who makes false representations to the department or its agents for the purpose of procuring a payment under the provisions of this chapter or who obtains such a payment by fraudulent means shall be punished by a fine of not less than two hundred nor more than five hundred dollars or by imprisonment for not more than one year.

Added by St.1969, c. 800, § 1.

§ 22. Persons aggrieved; right to hearing; investigation; decision; rehearing; notice

Any person aggrieved by the failure of the department to grant medical assistance or by the failure of the department to approve or reject an application for such assistance within thirty days after receiving such application or by the withdrawal of such assistance shall have a right to a hearing, after due notice, upon appeal to the department in the manner and form prescribed by the department; provided, such appeal is received by the department within sixty days after official notice of the action taken by the department has been received by the applicant or recipient. Such hearing shall be conducted by the commissioner of public welfare or a referee designated by the commissioner. The commissioner or any referee designated by him is hereby empowered to subpoena witnesses, administer oaths, take testimony and secure the production of such books, papers, records and documents as may be relevant to such hearings. The decision of the commissioner, when he conducts the hearing, or of the referee designated to conduct the hearing, shall be the decision of the department. Such appeals, hearings, and decisions shall be subject to the provisions of section sixteen of chapter eighteen.

The department may make such additional investigation as it may deem necessary and shall make such decision as to the granting of medical assistance and the amount of such assistance to be granted as in its opinion is justified and in conformity with the provisions of this chapter. Applicants or recipients affected by such decisions of the department shall, upon request, be given reasonable notice and opportunity for a hearing by the department. The provisions relating to the conduct of hearings and decisions thereon made, as provided in this section, shall be equally applicable in all cases wherein the department acts upon its own motion.

The commissioner, or the referee designated by the commissioner, as the case may be, shall render and issue his decision within ninety days after the date of the filing of the aggrieved person's appeal, except that when an aggrieved person appeals the rejection of his application for aid or assistance or the failure to act on said application, the commissioner or referee shall render and issue his decision within forty-five days after the date of filing of said appeal. The commissioner, but not his designee, may for good cause shown direct the director of the division of hearings but not his designee, to conduct a rehearing of the appeal. An order to conduct a rehearing shall not be construed as indicating or implying any position by the commissioner on the merits of the appeal. The director shall send seven days' written notice to all parties, including the date, time and place of such rehearing, which shall be held at a location convenient to the person appealing, and after such rehearing the director may, not later than thirty days after the issuance of the referee's decision issue a superseding decision.

Added by St.1969, c. 800, § 1. Amended by St.1974, c. 752, § 13; St.1974, c. 787, § 2.

§ 23. Use and disclosure of information

The use or disclosure of information concerning applicants and recipients shall be limited to purposes directly connected with the administration of the medical assistance program and the names of applicants and recipients shall not be published.

Added by St.1969, c. 800, § 1.

§ 24. Repealed by St.1974, c. 787, § 3

§ 25. Contract for administrative functions; underwriting of program

To the extent feasible the department may contract with one or more federal agencies or corporations authorized to do business in the commonwealth, including nonprofit hospital and medical service corporations, to carry out the necessary administrative functions of the medical assistance program established under the provisions of this chapter. The department may contract for the underwriting of all or any part of the medical assistance program with such corporation or federal agency.

Added by St.1969, c. 800, § 1. Amended by St.1973, c. 1210, § [29].

§ 26. Utilization review of care and services; data processing

The department, in cooperation with the department of public health and the medical assistance advisory council and in accordance with the regulations of the secretary, shall establish processes of utilization review for each item of care or service enumerated in section six.

The department shall establish data processing and collection procedures which will (1) monitor eligibility of recipients, (2) assure that providers are neither paid twice for the same care or service nor paid in amounts in excess of fee schedules or other applicable limits, and (3) provide the statistical data necessary for effective utilization review.

Added by St.1969, c. 800, § 1.

§ 27. Maintenance of standards for providers; development of new programs

The department, in cooperation with the department of public health, shall establish and maintain standards and conditions of participation for providers of all medical care and services enumerated in section six.

The department of public health, in cooperation with the department of public welfare, shall (1) plan for and stimulate the development of new medical resources and the expansion of existing resources, (2) stimulate and assist providers of health care and services to develop new and improved methods of delivery of services and payment for services, and (3) expand and increase the services of the department of public health to extend and improve, as far as is practicable, the availability and accessibility of the services enumerated in section six to all recipients of medical assistance, and the coordination of these services in such manner that the best interests of the recipients are served.

Added by St.1969, c. 800, § 1. Amended by St.1974, c. 787, § 4.

CHAPTER 119

PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM

PROTECTION OF CHILDREN

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PROTECTION OF CHILDREN

§ 1. Declaration of policy; purpose

It is hereby declared to be the policy of this commonwealth to direct its efforts, first, to the strengthening and encouragement of family life for the protection and care of children; to assist and encourage the use by any family of all available resources to this end; and to provide substitute care of children only when the family itself or the resources available to the family are unable to provide the necessary care and protection to insure the rights of any child to sound health and normal physical, mental, spiritual and moral development.

The purpose of this chapter is to insure that the children of the commonwealth are protected against the harmful effects resulting from the absence, inability, inadequacy or destructive behavior of parents or parent substitutes, and to assure good substitute parental care in the event of the absence, temporary or permanent inability or unfitness of parents to provide care and protection for their children.

Added by St.1954, c. 646, § 1. Amended by St.1972, c. 785, § 5.

§ 21. Definitions applicable to sections 22 to 51F

The following words and phrases when used in sections twenty-two to fifty-one F, inclusive, shall, unless the context otherwise requires, be construed as follows:

"Department", the department of social services.

"Parent", means mother or father, unless specified parent as defined under section one of chapter one hundred eighteen.

"Child in need of services", a child below the age of seventeen who persistently runs away from the home of his parents or legal guardian, or persistently refuses to obey the lawful and reasonable commands of his parents or legal guardian, thereby resulting in said parent's or guardian's inability to adequately care for and protect said child, or a child between the ages of six and sixteen who persistently and wilfully fails to attend school or persistently violates the lawful and reasonable regulations of his school.

"Custody", shall include the following powers:—(1) to determine the child's place of abode, medical care and education; (2) to control visits to the child; (3) to consent to enlistments, marriages and other contracts otherwise requiring parental consent. In the event that the parent or guardian shall object to the carrying out of any power conferred by this paragraph, said parent or guardian may take application to the committing court and said court shall review and make an order on the matter.

"Evidence", shall be admissible according to the rules of the common law and the General Laws and may include reports to the court by any person who has made an investigation of the facts relating to the welfare of the child and is qualified as an expert according to the rules of the common law or by statute or is an agent of the department or of an approved charitable corporation or agency substantially engaged in the foster care or protection of children. Such person may file with the court in a proceeding under said sections a report in full of all the facts obtained as a result of such investigation. The person reporting may be called as a witness by any party for examination as to the statements made in the report. Such examination shall be conducted as though it were on cross-examination.

Added by St.1972, c. 785, § 7. Amended by St.1973, c. 1073, § 3; St.1973, c. 1076, § 1A; St.1978, c. 552, § 28.

§ 22. Visitation of family foster homes; removal of child; procedure; temporary care; discharge of child to parent or legal guardian, or other provision for its care

An agent of the department shall visit each family foster home, not supervised and approved by a licensed placement agency, at least once a year and may be authorized by the department to remove a child to its care if in its judgment the welfare of the child or its protection from neglect or abuse so require. An agent who is refused such entry, or who is hindered in the removal of such child, may make complaint, on oath, to a justice of the court having jurisdiction, who may thereupon issue a warrant authorizing him to obtain sufficient aid, and at any reasonable time enter the building designated, and any part thereof, to investigate the treatment and condition of a child found there and to remove such child as herein provided. The department shall take such child temporarily into its care and forthwith notify the child's parent or legal guardian, and shall, upon request, discharge such child to its parent or legal guardian. If the parent or legal guardian is unable or refuses to make suitable provisions for the child, the department shall make lawful provisions for its care under section twenty-three or twenty-four.

Added by St.1972, c. 785, § 8.

§ 23. Responsibility of department to provide foster care for children

The department shall have the responsibility, including financial responsibility, for providing foster care for children through its own resources or by use of appropriate voluntary agencies according to the rules and regulations of the department in the following instances:

A. Upon the application of a parent or guardian or any person acting in behalf of the child, or of the child himself, the department may accept for foster care any child under eighteen years who in its judgment is in need of foster care. Such acceptance shall entail no abrogation of parental rights or responsibilities, but the department may accept from parents a temporary delegation of certain rights and responsibilities necessary to provide the foster care for a period of time under conditions agreed upon by both and terminal by either.

B. The department may accept from parents voluntary surrender of custody of their children under eighteen years for purposes of giving consent for adoption under the same conditions as noted in paragraph A of this section.

C. The department may seek and shall accept on order of a probate court the responsibility for any child under eighteen years of age who is without proper guardianship due to the death, unavailability, incapacity or unfitness of the parent or guardian, or on the consent of the parent or parents. Such responsibility shall include the right to determine the child's place of abode, medical care, and education; to control visits to the child; to give consents to enlistments, marriages and other contracts requiring parental consent, such responsibility to include the right to consent to adoption only when it is expressly included in the order of the court. If such child is in the care of the department of mental health, the responsibility enumerated above and all rights therein contained shall continue in the department. The department shall continue to have such responsibility for a mentally retarded person notwithstanding the fact that such person has reached the age of eighteen years, if the department has accepted responsibility for such person prior to his reaching the age of eighteen years and such person has been declared to be legally incompetent. Such responsibility shall continue in the department until such person shall be declared to be no longer legally incompetent.

D. The department shall accept on commitment from the Boston juvenile court, the Worcester juvenile court, the Bristol county juvenile court and the Springfield juvenile court and from any juvenile session of a district court of the commonwealth or from any superior civil court of the commonwealth any child under eighteen years of age declared in need of foster care under section twenty-six or to be a child in need of services under section thirty-nine G.

E. Any child under eighteen years who is left in any place and who is seemingly without a parent or legal guardian available shall be immediately reported to the department, which shall proceed to arrange care for such child temporarily and shall forthwith cause search to be made for parent or guardian. If parent or guardian cannot be found or is unable or refuses to make suitable provisions for the child, the department shall make such lawful provision as seems for the best interest of such child within the provisions of this chapter.

F. If the department has in its care a child whose parent or parents have consented to his adoption and the department has been unable to place such child in an adoptive home within sixty days of the receipt of such consent, it shall so notify all children's foster care agencies in the commonwealth licensed to place children for adoption. Said notice shall request that each such agency attempt to find an adoptive home for such child. If one of said agencies locates an adoptive home for such child the department shall cooperate with such agency in the placement of the child in such home and in the supervision of the placement during the one year waiting period. Any person in whose home such child has been placed by the division shall also be informed by the department if such child has become eligible for adoption, and such person may request consideration as a prospective adoptive parent.

G. A temporary shelter care facility program or a group care facility, licensed under the provisions of chapter twenty-eight A, may, for a seventy-two-hour period, provide temporary shelter to a child under eighteen without parental consent, provided that the child's welfare would be endangered if such shelter were not immediately provided. At the expiration of such seventy-two-hour period, the licensee shall (1) secure the consent of parent or guardian to continued custody and care, (2) refer the child to the department for custody and care, or (3) refuse to provide continued care and custody to said child.

The department may continue to have the responsibility for any person provided for in this section under twenty-one years for the purposes of specific educational or rehabilitative programs, under conditions agreed upon by both the department and such person and terminable by either.

Added by St.1954, c. 646, § 1. Amended by St.1960, c. 325; St.1962, c. 535; St.1969, c. 859, § 7; St.1970, c. 825; St.1970, c. 888, § 5; St.1972, c. 731, § 7; St.1973, c. 433; St.1973, c. 925, § 40; St.1973, c. 1073, § 4; St.1974, c. 682, § 4; St.1975, c. 276, §§ 1, 2.

§ 23A. Children born to inmates of correctional institutions or jails; care and custody

Any child born to an inmate of the Massachusetts Correctional Institution, Framingham, or of the Industrial School for Girls at Lancaster, or of a jail or a house of correction, shall be accepted by the department, and any child whose mother is committed to the Massachusetts Correctional Institution, Framingham, to a jail or a house of correction, or to the custody of the youth service board, may be accepted by the department. Thereupon the department in consultation with the commissioner of correction or the chairman of the youth service board shall make such provision at said place of commitment or elsewhere for the care of said child as may seem to be for the best interests of said child.

Added by St.1958, c. 588, § 2. Amended by St.1966, c. 473.

§ 23B. Services to unwed mothers

The department may, through its own resources or the resources of other appropriate agencies, provide services to mothers bearing children out of wedlock.

Added by St.1966, c. 495.

§ 24. Procedure to commit child to custody or other disposition

The Boston juvenile court, the Worcester juvenile court, the Bristol county juvenile court, and the Springfield juvenile court or the juvenile sessions of any district court of the commonwealth, except the municipal and district courts located within Suffolk county and except the municipal and district courts located within the territorial limits of the Worcester, Bristol county, and Springfield juvenile courts, upon the petition of any person alleging on behalf of a child under the age of eighteen years within the jurisdiction of said court that said child is without necessary and proper physical, educational or moral care and discipline, or is growing up under conditions or circumstances damaging to a child's sound character development, or who lacks proper attention of parent, guardian with care and custody, or custodian, and whose parents or guardian are unwilling, incompetent or unavailable to provide such care, may issue a precept to bring such child before said court, shall issue a notice to the department, and shall issue summonses to both parents of the child to show cause why the child should not be committed to the custody of the department or other appropriate order made. If after reasonable search no such parent can be found, summons shall be issued to the child's lawful guardian, if any, known to reside within the commonwealth, and if not, to the person with whom such child last resided, if known. If, after a recitation under oath by the petitioner of the facts of the condition of the child who is the subject of the petition, the court is satisfied that there is reasonable cause to believe that the child is suffering from serious abuse or neglect, or is in immediate danger of serious abuse or neglect, and that immediate removal of the child is necessary to protect the child from serious abuse or neglect, the court may issue an emergency order transferring custody of a child under this section to the department or to a licensed child care agency or individual described in clause (2) of section twenty-six. Said transfer of custody shall be for a period not exceeding seventy-two hours. Upon the entry of the order a date for a hearing on the extension of the order shall be set, which date shall fall within the seventy-two hour period. Written notice of the issuance of the emergency order and the reasons therefor, the hearing date and time, the right of the defendant to be represented by counsel, and to have counsel appointed where available if the defendant is indigent, shall be given to the parent or guardian with care and custody of the child and such other person, if any, as had custody at the time of the entry of the emergency order. Upon the issuance of the precept and order of notice the court shall appoint a person qualified under section twenty-one, to make a report to the court under oath of an investigation into conditions affecting the child. Said report shall then be attached to the petition and be a part of the record. The jurisdiction of the Boston juvenile court for the subject matter of this section shall extend to the territorial limits of Suffolk county.

Added by St.1954, c. 646, § 1. Amended by St.1969, c. 859, § 8; St.1972, c. 731, § 8; St.1973, c. 1076, § 2; St.1974, c. 260, § 19; St.1975, c. 276, § 3; St.1977, c. 799; St.1978, c. 478, §§ 49, 50.

§ 25. Hearing; custody of child

When such child is taken into custody upon said precept and brought before said court, the court may then hear said petition, or said petition may be continued to a time fixed for hearing, and the court may allow the child to be placed in the care of some suitable person or licensed agency providing foster care for children or the child may be committed to the custody of the department, pending a hearing on said petition.

Added by St.1954, c. 646, § 1.

§ 26. Procedure at hearing; order of commitment; reimbursement of commonwealth; petition for review

If the child is identified by the court and it appears that the precept and summonses have been duly and legally served, that said notice has been issued to the department and said report is received, the court may excuse the child from the hearing and shall proceed to hear the evidence.

If the court finds the allegations in the petition proved within the meaning of this chapter, it may adjudge that said child is in need of care and protection and may commit the child to the custody of the department until he becomes eighteen years of age or until in the opinion of the department the object of his commitment has been accomplished, whichever occurs first; or make any other appropriate order with reference to the care and custody of the child as may conduce to his best interests, including but not limited to any one or more of the following:—

(1) It may permit the child to remain with his parents, guardian, or other custodian, subject to conditions and limitations which the court may prescribe including supervision as directed by the court for the care and protection of the child.

(2) It may, subject to such conditions and limitations as it may prescribe, transfer temporary legal custody to any of the following:—

(*i*) any individual who, after study by a probation officer or other person or agency designated by the court, is found by the court to be qualified to give care to the child;

(*ii*) any agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child;

(*iii*) the department of social services.

(3) It may order appropriate physical care including medical or dental care.

In appropriate cases the court shall order the parents or parent of said child to reimburse the commonwealth or other agency for care.

On any petition filed in any court pursuant to this section, the department, parents, person having legal custody of, or counsel for a child may petition the court not more than once every six months for a review and redetermination of the current needs of such child whose case has come before the court.

Added by St.1954, c. 646, § 1. Amended St.1973, c. 925, § 41; St.1973, c. 1076, § 3; St.1978, c. 552, § 29.

§ 27. Appeals; fee; notice of right of appeal

The child, parent, guardian or person appearing in behalf of such child, or the department, may appeal from the adjudication of the court to the juvenile appeals session of the district courts for the county where the hearing is held, as designated by the administrative justice therefor, except as provided in section fifty-seven of chapter two hundred and eighteen; and also may appeal at the time of the order of commitment, in which events the entire case shall be before the court as if originally commenced therein; and the child may be committed to the custody of the department or placed in the care of some suitable person or licensed children's foster care agency pending determination of the appeal. Such appeal shall be entered in the appeals session by the court from which the appeal is taken, without payment of any entry fee, and said appeals session may advance such complaint for speedy trial. The court shall notify the child, parent, guardian or person appearing in behalf of such child of the right of appeal at the time of adjudication and also at the time of commitment.

Added by St.1954, c. 646, § 1. Amended by St.1973, c. 1005; St.1978, c. 478, § 51.

§ 28. Orders for payment of support; revision or alteration of order

The court by which a child is committed to the department or placed in the care of a suitable person or licensed children's foster care agency under section twenty-five, twenty-six or twenty-seven may make an order for the payment, by his parents or by his guardian, out of the ward's property, to the department or such person or agency at times to be stated in the order, of sums not exceeding the cost of his support; provided, that no order for the payment of money shall be entered until the person by whom payments are to be made shall have been summoned before the court and given an opportunity to be heard. The court from time to time, upon petition by or notice to the person ordered to pay such sum of money or by the department, may revise or alter such order or make a new order as the circumstances may require.

Added by St.1954, c. 646, § 1.

§ 29. Counsel for child; appointment

Whenever a child is before any court under subsection C of section twenty-three or sections twenty-four to twenty-seven, inclusive, said child shall have and shall be informed of the right to counsel at all hearings, and if said child is not able to retain counsel, the court shall appoint counsel for said child. The parent, guardian or custodian of such child shall have and shall be informed of the right to counsel at all hearings, and if said parent, guardian or custodian of such child is financially unable to retain counsel, the court shall appoint counsel for said parent, guardian or custodian. Notwithstanding the provisions of this section, the court may make such temporary orders as may be necessary to protect the child and society.

The department, upon its request, shall be represented by the district attorney for the district in which the case is being heard.

Added by St.1954, c. 646, § 1. Amended by St.1973, c. 1076, § 4; St.1978, c. 501.

§ 29A. Legal fees of minors in criminal proceedings; liability of parents

The parents of an unemancipated minor shall be liable for such reasonable legal fees and expenses of an attorney, other than an attorney supplied by the Massachusetts defenders committee or assigned to represent such minor by the court and paid out of public funds, or supplied by a voluntary charitable group, corporation or association, or one serving without charge, incurred by such minor in connection with criminal proceedings against him as the court may determine, not exceeding, however, three hundred dollars. This section shall not apply to a parent who, as a result of a decree of a court of competent jurisdiction, does not have custody of such minor.

Added by St.1970, c. 386.

§ 32. Placement of children in private families

Children in the care or custody of the department shall be placed in private families; provided, that any child who upon examination is found to be in need of special care, treatment or education may, if it is found by the department to be in the best interest of the child, be placed in a public or private institution or school, the primary purpose of which is the special care, treatment or education of children. The reasons for the placement of any such child shall be entered in the records of the department.

Added by St.1954, c. 646, § 1.

§ 33. Placement of children in family home care

In placing a child in family home care, the department, or any private charitable or child-care agency, shall consider all factors relevant to the child's physical, mental and moral health.

Added by St.1954, c. 646, § 1. Amended by St.1970, c. 404, § 1.

§ 34. Transportation of children in patrol wagons

A child involved in any proceeding shall not be transported in a patrol wagon from his home or from any other place to any court or institution, but if a conveyance is necessary shall convey him in such other suitable vehicle as shall be provided or designated by the department. Violation of this section shall be punished by a fine of not less than twenty-five nor more than fifty dollars or by imprisonment for not more than three months.

Added by St.1954, c. 646, § 1. Amended by St.1967, c. 658, § 74, eff. July 1, 1968.

§ 35. Furnishing parent or guardian information as to child; permission to visit; petition; notice

If the parent or guardian of a child placed in charge of any person, association or public or private institution by any state department, town board, or by any public or private corporation or body of persons authorized by law to so place children, or if one of the next of kin of an orphan so placed in charge and without guardian, is not, upon request, informed by such department, board, corporation or body of persons where the child is, the probate court for the county where such child has his legal residence may, upon petition of such parent, guardian or next of kin, and upon notice, if in its opinion the welfare of the child and the public interest will not be injured thereby, require such department, board, corporation or body of persons to give the information and permit the parent, guardian or next of kin to visit the child at such times and under such conditions as the court orders; and the court may revise its order or make new orders or decrees as the welfare of the child and the public interest may require.

Added by St.1954, c. 646, § 1.

§ 36. Bringing child into commonwealth with view to adoption, custody or care; permit; application; bond

No person or institution shall bring or cause to be brought into the commonwealth, or receive therein, from any other state, province or country, any child for the purpose of placing or boarding, or of procuring the placing or boarding of such child, in a family or home within the commonwealth, with a view to adoption, guardianship, custody or care by any person other than one related to him by blood or marriage, without first obtaining a permit therefor from the department. Such a permit shall not issue until a written application therefor has been filed with the department on forms by it prepared, containing such information relative to such child as the department may require, accompanied by an individual or blanket bond running to the commonwealth in such penal sum and with such surety or sureties as the department may approve, conditioned on the following:—(1) that all statements contained in such an application are true in substantial particulars; (2) that any such child becoming a public charge during his minority shall be removed from the state not later than thirty days after notice from the department; (3) that such child shall be removed from the state immediately upon his release from any penal or reformatory institution or training school to which he has been committed, within three years of his arrival within the state, for juvenile delinquency or crime; (4) that such child shall be placed or boarded under such agreement as will secure to him a proper home and surroundings, and as will render his custodian responsible for his proper care, education and training, under adequate supervision and subject to annual visitation by an agent; and (5) that such reports relative to the child shall be made to the department as it may require. In case of a breach of any condition of such a bond, the attorney general, upon request of the department, shall put the bond in suit, and the commonwealth or any city or town thereof shall be reimbursed from the proceeds for any expense incurred by reason of a breach of any such condition. Violation of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1954, c. 646, § 1.

§ 37. Rules and regulations of department

The department shall make rules and regulations concerning the administration of its duties.

Added by St.1954, c. 646, § 1. Amended by St.1967, c. 658, § 75.

§ 38. Closed hearings; publication of names

All hearings under sections one to thirty-seven, inclusive, shall be closed to the general public and it shall be unlawful to publish the names of persons before the court in any hearing provided for therein, except under section twenty-one.

Added by St.1954, c. 646, § 1.

§ 39. Abandonment of infant under age of ten

Whoever abandons an infant under the age of ten within or without any building, or, being its parent, or being under a legal duty to care for it, and having made a contract for its board or maintenance, absconds or fails to perform such contract, and for four weeks after such absconding or breach of his contract, if of sufficient physical and mental ability, neglects to visit or remove such infant or notify the department of his inability to support such infant, shall be punished by imprisonment in a jail or house of correction for not more than two years; or, if the infant dies by reason of such abandonment, by imprisonment in a jail or house of correction for not more than two and one half years or in the state prison for not more than five years.

Added by St.1954, c. 646, § 1. Amended by St.1967, c. 658, § 76.

§ 39D. Visitation rights to certain grandparents of unmarried minor children

If either the father or mother of an unmarried minor child is deceased, the parents of such deceased person may be granted reasonable visitation rights to the minor child during his minority by the probate court upon a finding that such visitation rights would be in the best interests of the minor child. No such visitation rights shall be granted if said child has been adopted by a person other than a stepparent and any visitation rights granted pursuant to this section prior to such an adoption of the child shall be automatically terminated by said adoption.

Added by St.1972, c. 631.

PHYSICALLY OR EMOTIONALLY INJURED CHILDREN

§ 51A. Injured children; reports; immunity; privileged communications; penalties; notice of determination

Any physician, medical intern, medical examiner, dentist, nurse, public or private school teacher, educational administrator, guidance or family counselor, probation officer, social worker, foster parent or policeman, who, in his professional capacity shall have reasonable cause to believe that a child under the age of eighteen years is suffering serious physical or emotional injury resulting from abuse inflicted upon him including sexual abuse, or from neglect, including malnutrition, or who is determined to be physically dependent upon an addictive drug at birth, shall immediately report such condition to the department by oral communication and by making a written report within forty-eight hours after such oral communication; provided, however, that whenever such person so required to report is a member of the staff of a medical or other public or private institution, school or facility, he shall immediately either notify the department or notify the person in charge of such institution, school or facility, or that person's designated agent, whereupon such person in charge or his said agent shall then become responsible to make the report in the manner required by this section. Any such person so required to make such oral and written reports who fails to do so shall be punished by a fine of not more than one thousand dollars.

Said reports shall contain the names and addresses of the child and his parents or other person responsible for his care, if known; the child's age; the child's sex; the nature and extent of the child's injuries, abuse, maltreatment, or neglect, including any evidence of prior injuries, abuse, maltreatment, or neglect; the circumstances under which the person required to report first became aware of the child's injuries, abuse, maltreatment or neglect; whatever action, if any, was taken to treat, shelter, or otherwise assist the child; the name of the person or persons making such report; and any other information which the person reporting believes might be helpful in establishing the cause of the injuries; the identity of the person or persons responsible therefor; and such other information as shall be required by the department.

Any person required to report under this section who has reasonable cause to believe that a child has died as a result of any of the conditions listed in said paragraph shall report said death to the department and to the district attorney for the county in which such death occurred and to the medical examiners as required by section six of chapter thirty-eight. Any such person who fails to make such a report shall be punished by a fine of not more than one thousand dollars.

In addition to those persons required to report pursuant to this section, any other person may make such a report if any such person has reasonable cause to believe that a child is suffering from or has died as a result of such abuse or neglect. No person so required to report shall be liable in any civil or criminal action by reason of such report. No other person making such a report shall be liable in any civil or criminal action by reason of such report if it was made in good faith.

Within sixty days of the receipt of a report by the department from any person required to report, the department shall notify such person, in writing, of its determination of the nature, extent and cause or causes of the injuries to the child, and the social services that the department intends to provide to the child or his family.

Any privilege established by section twenty or twenty B of chapter two hundred and thirty-three, by court decision or by profession code relating to the exclusion of confidential communications and the competency of witnesses, may not be invoked in any civil action arising out of a report made pursuant to this section.

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 276, § 4; St.1977, c. 501; St.1977, c. 942; St.1978, c. 215, § 1; St.1979, c. 312, § 1.

§ 51B. Physically or emotionally injured children; duties of department

The department shall:

(1) investigate and evaluate the information reported under section fifty-one A. Said investigation and evaluation shall be made within twenty-four hours if the department has reasonable cause to believe the child's health or safety is in immediate danger from fur-

ther abuse or neglect and within seven days for all other such reports. The investigation shall include a home visit at which the child is viewed, if appropriate, a determination of the nature, extent and cause or causes of the injuries, the identity of the person or persons responsible therefor, the name, age and condition of other children in the same household, an evaluation of the parents and the home environment, and all other pertinent facts or matters. Such determinations and evaluations shall be in writing;

(2) evaluate the household of the child named in the report and make a written determination of the risk of physical or emotional injury to any other children in the same household;

(3) take a child into immediate temporary custody if the department has reasonable cause to believe that the removal of the child is necessary to protect him from further abuse or neglect; provided, however, that the department shall make a written report stating the reasons for such removal; and provided further, that if any child is so taken into custody, the department must file a petition pursuant to section twenty-four on the next court day;

(4) offer to the family of any child which it has reasonable cause to believe is suffering from any of the conditions described in the report appropriate social services to prevent further injury to the child, to safeguard his welfare, and to preserve and stabilize family life whenever possible. If the family declines or is unable to accept or to participate in the offered services, the department, or any person may file a petition pursuant to section twenty-four requesting an appropriate order with reference to the care and protection of the child;

(5) file in the central registry established under section fifty-one F a written report containing information sufficient to identify each child whose name is reported pursuant to section fifty-one A or fifty-one B. A notation shall be sent to such central registry whenever further reports on each such child are filed with the department;

(6) utilize or purchase and utilize such protective services of private and voluntary agencies as it determines necessary;

(7) promulgate regulations to implement the provisions of sections fifty-one A to fifty-one F, inclusive.

Added by St.1973, c. 1076, § 5. Amended by St.1978, c. 131.

§ 51C. Custody of injured child pending transfer to department or hearing

If a parent or other person requests the release from a hospital of a child reported pursuant to section fifty-one A, the presiding judge of the juvenile court or the district court of the judicial district in which such hospital is located may, if he believes such release would be detrimental to the child's health or safety, authorize the hospital and the attending physician, by any means of communication, to keep such a child in the hospital until custody is transferred to the department or until a hearing may be held relative to the care and custody of such child.

Any other physician treating a child reported pursuant to section fifty-one A may be so authorized by the court to keep such child in his custody until such time as the custody of the child has been transferred to the department or until a hearing may be held relative to the care and custody of such child.

Added by St.1973, c. 1076, § 5.

§ 51D. Child protection consultation and advisory boards; duties; recommendations; review

The commissioner of the department of social services may establish throughout the commonwealth child protection consultation and advisory boards. Each board shall be composed of three members who shall be appointed by the commissioner. Not more than one member of each board shall be an employee of the department.

The consultation and advisory boards shall receive, within a reasonable time after a case is initially reported pursuant to section fifty-one A, a summary of the findings and recommendations on each case in which no court action has been taken.

Upon receipt of the written report each board shall make a recommendation for departmental action and shall communicate such recommendation to the commissioner.

In forming such recommendation, each board may request further information on the case and may call before it any person who has been involved in the investigation and evaluation which is being reviewed.

Each board shall give precedence to cases of children suffering serious physical or emotional damage as defined in section fifty-one A in which no court action or change in custody is recommended. The boards shall next review cases in which a party to the proceedings, or any person required to report under section fifty-one A requests a consultation. Other cases in which protective services are offered shall be reviewed in the order of their receipt.

Members of the board shall serve without compensation but, if they are public employees, shall be relieved from their formal duties during times when they are performing the duties specified in this section. Members of the boards shall be reimbursed for any expenses necessarily incurred in the performance of their duties.

Nothing in this section shall permit the board to review decisions of a court of competent jurisdiction.

Added by St.1973, c. 1076, § 5. Amended by St.1978, c. 552, § 32.

§ 51E. Reports of injured children; files; confidentiality; penalties

The department shall maintain a file of the written reports prepared pursuant to this section and sections fifty-one A to fifty-one D, inclusive. Such written reports shall be confidential. The child's parent, guardian, or counsel, the reporting person or agency, the appropriate review board, or a social worker assigned to the case, may, upon request, and upon the approval of the commissioner, receive a copy of the written report of the initial investigation. No such report shall be made available to any persons other than those enumerated in this section without the written and informed consent of the child's parent or guardian, the written approval of the commissioner, or an order of a court of competent jurisdiction.

The name and all other identifying information relating to any child, or to his parents or guardian, shall be removed from said reports ninety days after the department determines that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated, or, if said allegations are substantiated, when the child reaches the age of eighteen, or one year after the date of termination of services to the child or his family, whichever date occurs last.

Any person employed in the central registry who permits the data and information stored in the registry to be released without authorization to persons or agencies other than those specified in the rules and regulations shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two and one half years, or both.

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 528, § 1.

§ 51F. Central registry of information; confidentiality; penalties

The department shall maintain a central registry of information sufficient to identify children whose names are reported pursuant to section fifty-one A or fifty-one B. Data and information relating to individual cases in the central registry shall be confidential and shall be made available only with the approval of the commissioner or upon court order. The commissioner shall establish rules and regulations governing the availability of such data and information. The name and all other identifying characteristics relating to any child which is contained in the central registry, or to his parents or guardian, shall be removed ninety days after the department determines, after investigation, that the allegation of serious physical or emotional injury resulting from abuse or neglect cannot be substantiated or, if said allegations are substantiated, when the child reaches the age of eighteen, or one year after the date of termination of services to the child or his family, whichever date occurs last.

Any person who permits any information in the files to be released to persons or agencies other than those specified in this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than two and one half years, or both.

Added by St.1973, c. 1076, § 5. Amended by St.1975, c. 528, § 2.

§ 51G. Severability; sections 51A to 51F

Sections fifty-one A to fifty-one F, inclusive, are severable and the invalidity of any of said sections shall not affect the continuing validity of any other of said sections.

Added by St.1973, c. 1076, § 5.

CHAPTER 120

DEPARTMENT OF YOUTH SERVICES AND MASSACHUSETTS TRAINING SCHOOLS

Sec.
3. Appointment of superintendents, chaplains and physicians.
6A. Correction of socially harmful tendencies.
10. Use of public or private facilities, institutions and agencies; control; inspection; acceptance and control of delinquent children; effect of placement of person in or release from institution or control by department.

§ 3. Appointment of superintendents, chaplains and physicians

The commissioner of youth services shall from time to time appoint a superintendent, chaplains and a physician of each of said schools and institutions, and shall, in accordance with law appoint all other officers and employees required at said schools and institutions and shall prescribe their duties.

Added by St.1948, c. 310, § 22. Amended by St.1952, c. 605, § 6; St.1969, c. 838, § 30.

§ 6A. Correction of socially harmful tendencies

The keeper of each jail and the superintendent of each house of correction shall, at the county's expense, cause it to be constantly kept in as cleanly and healthful a condition as may be. No permanent vault

As a means of correcting the socially harmful tendencies of a person committed to it, the department of youth services may—

(*a*) Require participation by him in vocational, physical, educational, and correctional training and activities.

(*b*) Require such modes of life and conduct as seem best adapted to fit him for return to full liberty without danger to the public.

(*c*) Provide such medical or psychiatric treatment as is necessary.

Added by St.1948, c. 310, § 22. Amended by St.1969, c. 838, § 35.

§ 10. Use of public or private facilities, institutions and agencies; control; inspection; acceptance and control of delinquent children; effect of placement of person in or release from institution or control by department

(*a*) For the purpose of carrying out its duties and effectuating the decisions of the department of youth services with respect to the classification, placement for training and treatment, transfer, release under supervision and discharge of persons committed to the department the commissioner of youth services is authorized to make use of law enforcement, detention, supervisory, medical, educational, correctional, segregative, and other facilities, institutions and agencies, whether public or private, within the commonwealth wherever feasible, otherwise outside the commonwealth; provided however, that the department shall not transfer custody of any person who was committed to the department by a juvenile court or district court juvenile session and who is under eighteen to a penal institution. The commissioner of youth services may enter into agreements with the appropriate private or public officials for separate care and special treatment in existing institutions of persons committed to the department.

At least twice annually, the commissioner of youth services with the assistance of the executive secretary to the advisory committee shall be responsible for convening and programming a meeting of a youth services coordinating council composed of the commissioners of public health, mental health, education, public welfare, corrections, and probation, and the commissioner of administration and finance or their designees. The youth services coordinating council shall meet for the purposes of providing for the coordination and mutual assistance in the carrying out and evaluation of all the programs relating to youth services in the commonwealth. Said council shall jointly prescribe and from time to time amend rules and recommendations of their various departments for the aforementioned purposes.

(*b*) Nothing herein shall be construed as giving the department of youth services control over existing facilities, institutions or agencies other than those listed in section two, or as requiring such facilities, institutions or agencies to service said department inconsistently with their functions, or with the authority of their officers, or with the laws and regulations governing their activities, or as giving said department power to make use of any private institution or agency without its consent, or to pay a private institution or agency for services which a public institution or agency is willing and able to perform.

(*c*) Public institutions and agencies are hereby required to accept and care for delinquent children or convicted persons sent to them by the department in the same manner as they would be required to do had such persons been committed thereto by a juvenile court, district court, superior court or probate court.

(*d*) The department is hereby given the right and shall be required periodically to inspect all public and all private institutions and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the department reasonable opportunity to examine or consult with persons committed to the department who are for the time being in the custody of the institution or agency.

(*e*) Placement of a person by the department in any institution or agency not operated by the department or the release of such person from such an institution or agency shall not terminate the control of the department over such person. No person placed in such institution or under such an agency may be released by the institution or agency without the approval of the department.

Added by St.1948, c. 310, § 22. Amended by St.1950, c. 545; St.1952, c. 605, § 12; St.1969, c. 838, § 39; St.1973, c. 925, § 43; St.1978, c. 478, § 67.

CHAPTER 121A

URBAN REDEVELOPMENT CORPORATIONS

Sec.
1. Definitions.
2. Declaration of public necessity; acquisition and regulation of private property.
4. Rules and regulations of housing boards; standards for project plans; variations.

§ 1. Definitions

Unless a different meaning clearly appears from the context, the following terms, wherever used in this chapter, shall have the following meanings:

Unless a different meaning clearly appears from the context, the following terms, wherever used in this chapter, shall have the following meanings:—

"Blighted open area", a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights of way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights of way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in business or economic conditions or practices, or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other conditions; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated.

"Decadent area", an area which is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for non-payment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and in which under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space, or because of excessive land coverage, or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions.

"Sub-standard area", an area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitation facilities, or any combination of these factors, are detrimental to safety, health, morals, welfare or sound growth of a community.

"Construct", "construction", and "erect" shall include the renovation, rehabilitation or remodeling of buildings or structures.

"Housing board" or "board", the department of community affairs.

"Project", any undertaking consisting of the construction in a blighted open, decadent or sub-standard area of decent, safe and sanitary residential, commercial, industrial, institutional, recreational or governmental buildings and such appurtenant or incidental facilities as shall be in the public interest, and the operation and maintenance of such buildings and facilities after construction. A "project" may include as incidental thereto any one or more of the following: (a) acquisition and assembly of the land (and buildings and structures and other improvements thereon, if any) within a blighted open, decadent or sub-standard area; (b) clearance of the land within a blighted open, decadent or sub-standard area; (c) acquisition, assembly and clearance of land, buildings or structures not in themselves blighted, decadent, or sub-standard if their inclusion is necessary for the clearance, redevelopment, reconstruction or rehabilitation of a blighted open, decadent or sub-standard area; and (d) installation, construction, and reconstruction of public and private ways, public utilities and services, and site improvements essential to the preparation of a blighted open, decadent or sub-standard area for beneficial development or redevelopment.

"Zoning ordinance or by-law", any special statute establishing zoning regulations in one or more cities, towns or districts, or any ordinance or by-law adopted under chapter forty A or corresponding provisions of earlier laws.

"Mayor", the duly elected mayor of the city in all cities except those having a Plan D or a Plan E charter and in cities having a Plan D or a Plan E charter, the city manager.

Added by St.1945, c. 654, § 1. Amended by St.1947, c. 15; St.1953, c. 647, § 1; St.1954, c. 73, §§ 1, 2; St.1960, c. 652, § 1; St.1964, c. 636, § 9; St. 1967, c. 172, §§ 1, 2; St.1968, c. 761, § 10.

§ 2. Declaration of public necessity; acquisition and regulation of private property

It is hereby declared that blighted open, decadent or sub-standard areas exist in certain cities and towns in this commonwealth, and that each of such areas constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth and the sound growth of the communities therein; that the existence of each of such areas contributes substantially to the spread of disease and crime, necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution, punishment, and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities, constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns, and retards the provision of residential, commercial and industrial buildings and other improvements; that each of such areas decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities; that because of the economic and social interdependence of different communities and of different areas within single communities the redevelopment of land not only in sub-standard areas but also in blighted open and decadent areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and sub-standard, decadent and blighted conditions and to prevent the recurrence of such slums or sub-standard, decadent or blighted conditions or their development in other parts of the community or in other communities; and that the redevelopment of blighted open areas promotes the clearance of substandard and decadent areas and prevents their creation and occurrence; that the menace of blighted open, decadent or sub-standard areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the development of property for the purpose of eliminating blighted open, decadent or sub-standard conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, and disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by housing or redevelopment authorities and any assistance which may be given by cities and towns or any other public bodies in connection therewith, are public uses and purposes for which the aids herein provided may be given, public money expended, and the power of eminent domain exercised; that a public exigency exists which makes the use, acquisition, planning, clearance, rehabilitation or rebuilding of such blighted open, decadent, or sub-standard areas for residential, commercial, industrial, institutional, recreational or governmental buildings and appurtenant or incidental facilities as herein provided a public use and benefit for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination.

It is hereby further declared that in many areas throughout the commonwealth there is a shortage of decent, safe and sanitary buildings for residential, commercial, industrial, institutional, recreational, or governmental purposes; that this condition is most extreme in communities where blighted open, decadent or sub-standard areas exist; that the aforesaid conditions cannot be corrected by the ordinary operations of private enterprise without the aids herein provided; that the provisions of this chapter will stimulate the investment of private capital in blighted open, decadent or sub-standard areas, and in the construction, maintenance and operation in such areas of needed decent, safe and sanitary residential, commercial, industrial, institutional, and recreational buildings; that the construction, maintenance and operation of such buildings on such land in such areas will assist in achieving permanent and comprehensive elimination of existing slums, and substandard, decadent and blighted conditions and in preventing the recurrence or redevelopment of such conditions.

Added by St.1945, c. 654, § 1. Amended by St.1953, c. 647, § 1; St.1960, c. 652, § 2.

§ 4. Rules and regulations of housing boards; standards for project plans; variations

The housing board may make, and from time to time amend, reasonable rules and regulations in regard to the procedure for securing the approval of projects under this chapter and for the financing, construction, management and maintenance of such projects. The housing board may, for the guidance of the proponents of a project, fix general standards to which the plans of such a project shall conform. Variations from such standards may be allowed for the accomplishment of the purposes of this chapter. Such standards may contain provisions more restrictive than those imposed by applicable planning, zoning, health and building laws, ordinances, by-laws and regulations.

Added by St.1945, c. 654, § 1.

CHAPTER 121B

HOUSING AND URBAN RENEWAL

HOUSING PROGRAMS

Sec.
25. Statement of emergency.
28. Application of laws, ordinances, and regulations of cities or towns relating to buildings, planning, zoning and public health.
33. Equivalent elimination of substandard dwelling units.

HOUSING FOR THE ELDERLY AND THE HANDICAPPED

Sec.
38. Declaration of policy.

RENTAL ASSISTANCE PROGRAM

42. Declaration of necessity.

URBAN RENEWAL PROGRAMS

45. Declaration of necessity.

OTHER PROGRAMS

58. Declaration of necessity.

HOUSING PROGRAMS

§ 25. Statement of emergency

It is hereby declared that substandard and decadent areas exist in certain portions of the commonwealth, and that there is not in the commonwealth, within a reasonable distance of the principal centers of employment, an adequate supply of low-rent housing for families of low income; that in certain portions of the commonwealth decent, safe and sanitary housing cannot be provided for families of low income in rural areas at a cost which would warrant private enterprise in the locality or in the same general area to provide an adequate supply thereof; that this situation tends to cause an increase and spread of disease and crime and constitutes a menace to the health, safety, morals, welfare and comfort of the inhabitants of the commonwealth and is detrimental to property values therein; that this situation cannot readily be remedied by the ordinary operations of private enterprise; that a public exigency exists which makes the clearance of substandard or decadent areas and the provision of housing for persons of low income a public necessity; that the clearance of substandard and decadent areas and the provision of housing for persons of low income, or either, constitute a public use for which private property may be acquired by eminent domain and public funds raised by taxation may be expended; and the enactment of sections one to forty-four of this chapter is declared to be a public necessity.

Added by St.1969, c. 751, § 1.

§ 28. Application of laws, ordinances, and regulations of cities or towns relating to buildings, planning, zoning and public health

Except as provided in section thirty with respect to projects leased from the federal government, every housing project shall be subject to all laws and all ordinances, by-laws and regulations of the city or town in which it lies, relating to the construction and repair of buildings, town planning, zoning and the protection of the public health; provided, that with the approval of the department and the supervisor of plans of the department of public safety, any building in a housing project of not more than three stories in height which is divided into two or more sections by fire division separations in accordance with any special law relative thereto or with any ordinance, by-law or regulation of the city or town in which it lies, which contains an enclosed stairway in each section extending from the roof to the ground directly accessible to the occupants of each dwelling unit therein, which is built of fireproof or fire resistive construction as defined by any special law relative thereto or by any ordinance, by-law or regulation of the city or town in which it lies, and which, together with the other buildings on the same project, does not occupy more than thirty per centum of the area thereof, may be designed, erected and maintained with only one means of egress from a dwelling unit to a stairway or public corridor; provided, that when any room in a dwelling unit is more than forty feet from such means of egress, there shall be two egresses from such dwelling unit located at points as widely separated from one another as may be reasonably feasible, with not more than four dwelling units above the second story in each section, with exterior egress doors not less than three feet in width, although such dwelling units contained in the aggregate more than eight rooms and the only means of egress is as above described; and provided further, with the approval of the department, and the supervisor of plans of the department of public safety, any building in a housing project or any section of such a building which is set apart by a fire wall or fire walls of more than three stories in height, which is of fireproof or fire resistive construction in accordance with any special law relative thereto, or with any ordinance, by-law or regulation of the city or town in which it lies, and which is provided with two enclosed stairways isolated from each other by fire division separations in accordance with any special law relative thereto or with any ordinance, by-law or regulation of the city or town in which it lies, or as widely separated from each other as may be reasonably feasible, and which, if of more than six stories in height, is equipped with automatic sprinklers installed in cellars, basements, workrooms, shops, storerooms and kitchens, may be designed, erected and maintained with only one means of egress from each dwelling unit to a public corridor; provided, that when any room of a dwelling unit is more than forty feet from such means of egress, there shall be two egresses from such dwelling unit located at points as widely separated from one another as may be reasonably feasible; and provided, further, that in buildings three or more stories in height, stairs and landings, and doors connecting public corridors and stair enclosures, when serving not more than three hundred persons, shall be not less than three feet in width between walls or between wall and balustrades with stairs equipped with a handrail on one side, although the only means of egress and fire extinguishing apparatus are as above described.

Added by St.1969, c. 751, § 1.

§ 33. Equivalent elimination of substandard dwelling units

No project for low-rent housing involving the construction of new dwellings shall be undertaken by a housing authority unless the city or town has entered into an agreement with the housing authority providing that, subsequent to the initiation of the project and within five years after the completion thereof, there has been or will be elimination by demolition, condemnation, effective closing or compulsory repair or improvement of unsafe or unsanitary dwelling units situated in the locality or metropolitan area substantially equal in number to the number of newly constructed dwelling units provided by such project; provided, that where more than one family is living in an unsafe or unsanitary dwelling unit, the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein; and provided, further, that such elimination may, in the discretion of the department be deferred in any locality or metropolitan area where there is an acute shortage of decent, safe or sanitary housing available to families of low income; and provided, further, that this requirement shall not apply in the case of any law-suit housing project located in a rural nonfarm area, or to any low-rent housing project undertaken under the provisions of section thirty-four.

Added by St.1969, c. 751, § 1.

HOUSING FOR THE ELDERLY AND THE HANDICAPPED

§ 38. Declaration of policy

It is hereby declared that substandard and decadent areas exist in certain portions of the commonwealth and that there is not, in certain parts of the commonwealth, an adequate supply of decent, safe and sanitary housing for elderly persons of low income, available for rents which such persons can afford to pay, and the rents which such persons can afford to pay would not warrant private enterprise in providing housing for such persons; that this situation tends to cause an increase and spread of communicable and chronic diseases, that the lack of properly constructed dwelling units designed specifically to meet the needs of elderly persons aggravates those diseases peculiar to the elderly thereby crowding the hospitals in the commonwealth with elderly persons under conditions of idleness that inevitably invite further senility; that this situation constitutes a menace to the health, safety, welfare and comfort of the inhabitants of the commonwealth and is detrimental to property values in the localities in which it exists; that this situation cannot readily be remedied by private enterprise; and that a public exigency exists which makes the provision of housing for elderly persons of low income and the clearance of decadent or substandard areas a public necessity; that the provision of housing for elderly persons of low income for the purpose of reducing the cost to the commonwealth of their care by promoting their health and welfare, thereby prolonging their productivity in the interest of the state and nation, and the clearance of decadent or substandard areas, or either, constitutes and hereby is declared to be a public use for which private property may be taken by eminent domain and public funds raised by taxation may be expended.

It is hereby further declared that there is not, in certain parts of the commonwealth, an adequate supply of decent, safe and sanitary housing for handicapped persons of low income available for rents which such persons can afford to pay, and the rents which such persons can afford to pay would not warrant private enterprise in providing housing for such persons; that this situation often results in the institutionalization of such persons at substantial cost to the commonwealth or their resort to decadent or substandard housing with the result that such decadent or substandard housing cannot be eliminated; that this situation aggravates the hardship of handicapped persons and prevents their living productive lives and that the provision of housing for handicapped persons of low income is in the interest of the commonwealth and hereby is declared to be a public use for which private property may be taken by eminent domain and public funds may be expended.

Added by St.1969, c. 751, § 1. Amended by St.1970, c. 812, § 3.

RENTAL ASSISTANCE PROGRAM

§ 42. Declaration of necessity

It is hereby declared (*a*) that there does not now exist within the commonwealth an adequate supply of decent, safe and sanitary dwelling units available at rents which families of low income, and handicapped persons of low income or families of low income of which one or more persons is handicapped, can afford without depriving themselves of the other necessities of life, (*b*) that the elimination of decadent or substandard areas in the commonwealth and the rehousing of the families now in such areas, many of them of low income, in decent, safe and sanitary housing is a public necessity, (*c*) that experience has demonstrated that the construction of the new low-rent housing projects on the large scale required to provide the needed dwelling units would be unduly expensive and would generate undesirable social consequences, (*d*) that there exists a supply of moderate rental dwelling units within the commonwealth presently under construction or vacant which could be used to house such families of low income, and handicapped persons of low income or families of low income of which one or more persons is handicapped, as cannot presently afford decent, safe and sanitary housing, provided public funds are available to supplement the portion of their income which they can afford to spend on housing, and (*e*) a program of rental assistance operated through the housing authorities in the cities and towns would help end the undesirable concentration and segregation of families of low income, and handicapped persons of low income or families of low income of which one or more persons is handicapped, in separate, concentrated areas of our cities and towns and help give every citizen an equal opportunity to enjoy decent, safe and sanitary housing in a neighborhood of his own choice.

Added by St.1969, c. 751, § 1. Amended by St.1974, c. 689, §§ 12, 13.

URBAN RENEWAL PROGRAMS

§ 45. Declaration of necessity

It is hereby declared that substandard, decadent or blighted open areas exist in certain cities and towns in this commonwealth; that each constitutes a serious and growing menace, injurious and inimical to the safety, health, morals and welfare of the residents of the commonwealth; that each contributes substantially to the spread of disease and crime, necessitating excessive and disproportionate expenditure of public funds for the preservation of the public health and safety, for crime prevention, correction, prosecution and punishment and the treatment of juvenile delinquency and for the maintenance of adequate police, fire and accident protection and other public services and facilities; that each constitutes an economic and social liability, substantially impairs or arrests the sound growth of cities and towns, and retards the provision of housing accommodation; that each decreases the value of private investments and threatens the sources of public revenue and the financial stability of communities; that because of the economic and social interdependence of different communities and of different areas within single communities, the redevelopment of land in decadent, substandard and blighted open areas in accordance with a comprehensive plan to promote the sound growth of the community is necessary in order to achieve permanent and comprehensive elimination of existing slums and substandard conditions and to prevent the recurrence of such slums or conditions or their development in other parts of the community or in other communities; that the redevelopment of blighted open areas promotes the clearance of decadent or substandard areas and prevents their creation and occurrence; that the menace of such decadent, substandard or blighted open areas is beyond remedy and control solely by regulatory process in the exercise of the police power and cannot be dealt with effectively by the ordinary operations of private enterprise without the aids herein provided; that the acquisition of property for the purpose of eliminating decadent, substandard or blighted open conditions thereon and preventing recurrence of such conditions in the area, the removal of structures and improvement of sites, the disposition of the property for redevelopment incidental to the foregoing, the exercise of powers by urban renewal agencies and any assistance which may be given by cities and towns or any other public bodies in connection therewith are public uses and purposes for which public money may be expended and the power of eminent domain exercised; and that the acquisition, planning, clearance, conservation, rehabilitation or rebuilding of such decadent, substandard and blighted open areas for residential, governmental, recreational, educational, hospital, business, commercial, industrial, or other purposes, including the provision of streets, parks, recreational areas and other open spaces, are public uses and benefits for which private property may be acquired by eminent domain or regulated by wholesome and reasonable orders, laws and directions and for which public funds may be expended for the good and welfare of this commonwealth.

It is further declared that while certain of such decadent, substandard and blighted open areas, or portions thereof, may require acquisition and clearance because the state of deterioration may make impracticable the reclamation of such areas or portions by conservation and rehabilitation, other of such areas, or portions thereof, are in such condition that they may be conserved and rehabilitated in such a manner that the conditions and evils enumerated above may be alleviated or eliminated; and that all powers relating to conservation and rehabilitation conferred by this chapter are for public uses and purposes for which public money may be expended and said powers exercised.

The necessity in the public interest for the provisions of this chapter relating to urban renewal projects is hereby declared as a matter of legislative determination.

Added by St.1969, c. 751, § 1.

OTHER PROGRAMS

§ 58. Declaration of necessity

It is hereby declared that (*a*) that there exist in certain cities and towns in the commonwealth substandard dwelling houses in urban renewal project areas which constitute a serious and growing menace and create a housing shortage, injurious to the public health, safety, morals and welfare of the residents of the commonwealth, and the declarations heretofore made in this chapter with respect to such areas are hereby reaffirmed; (*b*) that while many of such dwelling houses may require acquisition and clearance as provided in this chapter because their state of deterioration may make impracticable their reclamation by conservation or rehabilitation, others in such areas are in such condition that they may, through the means provided in section fifty-nine, be conserved or rehabilitated in such a manner that the conditions and evils hereinbefore enumerated may be alleviated or eliminated so that such dwelling houses may be returned to or remain in private ownership and be available as decent, safe and sanitary housing; and (*c*) that all powers conferred by said section fifty-nine are for public uses and purposes for which public money may be expended.

Added by St.1969, c. 751, § 1.

CHAPTER 122

TEWKSBURY HOSPITAL

Sec.
1. Supervision; inpatient and outpatient services.
2. Board of trustees; number; appointment.
3. Board of trustees; powers and duties; appointment of superintendent.
4. Trustees; rules and regulations.
5. Corporate status of trustees; powers and duties.
6. Deposit of funds by superintendent.
7. Unclaimed patients' funds; disposition.
8. Unclaimed patients' valuables; disposition; record.
9. Unclaimed bank books of former patients; payment to trustees.
10. Powers of trustees relative to patients and their property.
11. Receiving of persons.
12. Removal of persons to places of settlement.
13. Removal of persons infected with dangerous disease; expenses.
14. Admission of persons affected with diseases; expenses.
15. Contracts for employment of patients; discharge; forfeiture of support.
16. Liability of kindred for support.
17 to 21. Repealed.
22. Treasurer of banking institutions; failure to disclose deposits, etc.; penalty.
23. Unlawful possession of liquids or articles by patients with intent to consume as inebriants.

§ 1. Supervision; inpatient and outpatient services

The department of public health, in this chapter called the department, shall have general supervision of the Tewksbury hospital; and may delegate any of its powers and duties to and execute any of its functions by agents appointed for the purpose.

Subject to appropriation and subject to the provisions of sections twenty-five B to twenty-five G, inclusive, of chapter one hundred and eleven, the department shall be authorized to establish at the Tewksbury hospital, with the approval of the superintendent and the trustees, any inpatient or outpatient services, including but not limited to medical, surgical, restorative, rehabilitative or chronic services, mental health and mental retardation services, extended care services, dental services, rehabilitative therapy services, family planning services, services for treatment of alcoholism and drug addiction, skilled nursing care services, intermediate care facility services, and residency care services.

Added by St.1958, c. 613, § 8. Amended by St.1975, c. 752, § 5.

§ 2. Board of trustees; number; appointment

There shall be a board of trustees of the Tewksbury Hospital serving in the department consisting of seven persons, three of whom shall annually in June be appointed by the governor for three years, except that in the year nineteen hundred and sixty and every third year thereafter only one such trustee shall be appointed.

Added by St.1958, c. 613, § 8. Amended by St.1977, c. 864, § 13.

§ 3. Board of trustees; powers and duties; appointment of superintendent

The trustees of the Tewksbury hospital, in this chapter called the trustees, shall hold meetings monthly at the hospital. One trustee shall visit the hospital at least once a week. The commissioner of the department, with the approval of the public health council, shall appoint a superintendent thereof, who may be the medical director. No member of the board of trustees shall be employed at the hospital.

Added by St.1958, c. 618, § 8.

§ 4. Trustees; rules and regulations

The trustees shall, with the approval of the department, make rules and regulations for the proper management and government of said hospital, and shall see to their enforcement.

Added by St.1958, c. 613, § 8.

§ 5. Corporate status of trustees; powers and duties

The trustees shall be a corporation for the purpose of taking and holding, by them and their successors, in the name of the commonwealth, and in accordance with the terms thereof, any grant or devise of land or any gift or bequest of money or other personal property made for the use or benefit of the Tewksbury hospital, its patients or former patients, and for the purpose of preserving and investing the proceeds thereof in notes or bonds secured by good and sufficient mortgages or other security, with all the powers necessary to effect said purposes. For said purposes the trustees may employ such agencies as they may from time to time determine to be wise and proper, including any trust company or other corporation authorized by law to administer trusts, and may from funds received as aforesaid or the income thereof pay such expenses as may be necessary for the wise administration of such gifts or trusts, or may delegate any powers conferred by this section upon any such trust company or corporation. In the use, management and administration of such gifts or trusts, the trustees or their agents shall in their discretion so act as most effectively to aid the beneficiaries in accordance with the terms of the gift or trust, and when so acting their judgments and determinations in extending or denying aid or benefit to any individual shall be conclusive and final. No trustee shall be answerable for the use of any money or property received by any beneficiary or for the default or neglect of any co-trustee, or of any agent employed hereunder, or of any corporation to which power is delegated or transferred as herein authorized.

Added by St.1958, c. 613, § 8.

§ 6. Deposit of funds by superintendent

The superintendent of the Tewksbury hospital may deposit in any bank or trust company within the commonwealth or on paid-up shares and accounts of and in co-operative banks, funds belonging to patients and funds deposited by their relatives or friends to be used for their benefit or may use said funds to purchase share accounts of a federal savings and loan association located in the commonwealth, in an account entitled "Patients' Funds", or the superintendent may, whenever he deems it desirable, deposit such funds in such banks in separate accounts as trustee or use said funds to purchase share accounts of a federal savings and loan association located in the commonwealth, as trustee, in each instance, for the patient.

Added by St.1958, c. 613, § 8.

§ 7. Unclaimed patients' funds; disposition

So much of any funds known as "Patients' Funds" as represents monies belonging to, or deposited for the benefit of, former patients of said hospital, which shall have remained unclaimed for more than seven years, shall be paid by the superintendent thereof to the state treasurer to be held subject to be paid to the person establishing a lawful right thereto, with interest at the rate of three per cent per annum from the time when it was so paid to the state treasurer to the time when it is paid by him to such person; provided, that so much of any monies so paid to the state treasurer as may be necessary to reimburse the trustees for any sum due for the support of the person by whom or for whose benefit such money was originally deposited shall be credited to said trustees for that purpose. After six years from the date when any such monies were paid to the state treasurer the same or any balance thereof then remaining in his hands may be used as a part of the ordinary revenue of the commonwealth. Any person may, however, establish his claim after the expiration of the six years above mentioned, and any claim so established shall be paid from the ordinary revenue of the commonwealth. Any person claiming a right to money deposited with the state treasurer under this section may establish the same by a petition to the probate court; provided, that in cases where claims amount to less than fifty dollars, the claims may be presented to the comptroller who shall examine the same and allow and certify for payment such as may be proved to his satisfaction.

Added by St.1958, c. 613, § 8.

§ 8. Unclaimed patients' valuables; disposition; record

Property known as "Patients' Valuables", belonging to, or deposited for the benefit of, former patients of said hospital, which shall have remained unclaimed for more than one year, shall be disposed of as hereinafter provided, by the superintendent thereof and a representative of the trustees designated by them acting as a special board for said purpose, but only if all known next of kin of the former patient shall have been notified in writing by the said superintendent. The board shall ascertain whether the property has any sale value and, if so, shall solicit from at least three reputable dealers in like property offers for the purchase thereof, and shall sell the same to the dealer offering the highest price. The proceeds of such sale shall become a part of the "Patients' Funds" and shall be disposed of as provided in section seven. The board may dispose of such of said property as, in its opinion, has no sale value, or any of said property for which no offer, solicited as aforesaid, has been received, in such manner as it may deem proper. A complete record of each transaction hereunder shall be made and signed by both members of the board and filed with the other records at said hospital relating to the former patient whose property shall have been disposed of as aforesaid.

Added by St.1958, c. 613, § 8.

§ 9. Unclaimed bank books of former patients; payment to trustees

Any bank book representing a deposit account in a savings bank or trust company within the commonwealth, which belongs to a former patient of said hospital and shall have remained unclaimed for more than two years in the custody of the superintendent thereof, may be presented by the trustees to such bank or trust company accompanied by their written request for payment to them of such deposit account except so much as is in excess of the amount due the commonwealth for the support of such patient, and such bank or trust company shall thereupon pay to the trustees the amount so requested.

Added by St.1958, c. 613, § 8.

§ 10. Powers of trustees relative to patients and their property

The trustees shall have and exercise the same powers relative to patients and their property as towns and boards of public welfare have relative to persons supported or relieved by them, and the same powers as said boards to return patients of said hospital to the place or country from which they came.

Added by St.1958, c. 613, § 8.

§ 11. Receiving of persons

The superintendent, subject to the rules and regulations of the hospital, shall receive any person sent with a proper certificate from the department of public welfare, or from the department of public health, or from a board of health, or from the institutions department of the city of Boston, or from some one duly authorized by said boards or said departments, and shall provide for them under the rules and regulations made under section four.

Added by St.1958, c. 613, § 8. Amended by St.1974, c. 260, § 20.

§ 12. Removal of persons to places of settlement

If a person, who has received a certificate as described in section eleven, desires to be sent to any state or place where he resides, or to friends willing to support him, the department of public welfare, on the advice of the department of public health, may remove said person, if in its judgment it is for the interest of the commonwealth and of said person.

Added by St.1958, c. 613, § 8. Amended by St.1974, c. 260, § 21.

§ 13. Removal of persons infected with dangerous disease; expenses

The department may, if expedient, remove any person infected with a disease dangerous to the public health, who is maintained or liable to be maintained by the commonwealth, to the Tewksbury hospital, or may provide such place of reception for such person as is judged best for his accommodation and the safety of the public, which place shall be subject to the regulations of said department, and it shall have the same authority to remove such person thereto as is conferred upon boards of health by section ninety-five of chapter one hundred and eleven, and any expenses incurred in carrying out this section may be paid from the annual appropriation to the department of public welfare for expenses in connection with smallpox and other diseases dangerous to the public health.

Added by St.1958, c. 613, § 8.

§ 14. Admission of persons affected with diseases; expenses

Subject to such rules and regulations as the department may prescribe, any person who is a resident of the commonwealth and is affected with any disease, mental illness, mental retardation or suffers any other mental disability, or smallpox, or other diseases dangerous to the public health, or whose health would be injured or endangered by removal, may be admitted to the Tewksbury Hospital, with the approval of the superintendent and the trustees, providing the hospital is suitable for the care and treatment of such person. The department may make rules and regulations for such admission and to facilitate the operation of this section.

The expenses of the maintenance of such a patient shall be paid by him, his executor or administrator, except that persons in need of public assistance shall have the responsibility for payment of such charges fixed in accordance with the provisions of the particular category of assistance under which they are aided. Persons or kindred bound by law to support such needy persons, not eligible for public assistance, shall be assessed in accordance with rates established by the rate setting commission under chapter six A.

Added by St.1958, c. 613, § 8. Amended by St.1964, c. 545, § 1; St.1968, c. 492, § 15; St.1973, c. 1229, § 4k; St.1974, c. 260, § 22; St.1975, c. 752, § 6.

§ 15. Contracts for employment of patients; discharge; forfeiture of support

The superintendent, with the consent of the trustees, may contract with any person for the employment of any patient of the said hospital in any kind of lawful labor for such wages or on such terms as the superintendent and trustees approve. If a contract is so made, such patient shall be discharged from said institution, and, if he refuses to accept the employment offered, shall forfeit all claim to support.

Added by St.1958, c. 613, § 8.

§ 16. Liability of kindred for support

The kindred liable by law to towns for expenses in supporting such persons shall in like manner be liable to the commonwealth for any expense incurred for such persons; and the department may adopt the same measures and institute like proceedings for the recovery of such expenses from the kindred so liable as are prescribed for towns in like cases.

Added by St.1958, c. 613, § 8.

§§ 17 to 20. Repealed by St.1964, c. 545, § 2, eff. Jan. 1, 1964

§ 21. Repealed by St.1974, c. 260, § 23

§ 22. Treasurer of banking institutions; failure to disclose deposits, etc.; penalty

A treasurer of a savings bank, national bank, trust company, co-operative bank, benefit association, credit union, insurance company or safe deposit company who, upon written request, signed by an officer of the department of public health, unreasonably refuses to inform him of the amount deposited in the corporation, association, or credit union to the credit of a person named in such request who is a charge upon the commonwealth, or who wilfully renders false information in reply to such request, shall forfeit fifty dollars to the use of the commonwealth.

Added by St.1958, c. 613, § 8.

§ 23. Unlawful possession of liquids or articles by patients with intent to consume as inebriants

Any patient of Tewksbury hospital who has in his possession, within or outside the precincts thereof, any liquid or other article with intent to consume the same as an inebriant, or to convey, give, sell or deliver the same to any other patient thereof for such consumption, shall be punished by a fine of not more than fifty dollars or by imprisonment in a jail or house of correction for not more than six months. This section shall not apply to the possession, handling or consumption of any such liquid or article under lawful directions of a physician.

Added by St.1958, c. 613, § 8.

CHAPTER 123

TREATMENT AND COMMITMENT OF MENTALLY ILL AND MENTALLY RETARDED PERSONS

Sec.

1. Definitions.
5. Commitment or retention hearing; right to counsel; independent medical examination; notice.

Sec.
7. Commitment and retention of dangerous persons; petition; notice; hearing.
10. Voluntary admissions; consultation with attorney; discharge; outpatients; veterans.
12. Emergency restraint of dangerous persons; application for hospitalization; duration; examination; notice to district court; hearing; voluntary admissions; discharge.
15. Competence to stand trial or criminal responsibility; examinations; reports; findings; hearings; orders; hospitalization; period of observation; commitment; delinquents.
18. Hospitalization of mentally ill prisoners; examination; reports; hearings; commitment; voluntary admission; reduction of sentence; discharge.
28A. Violent or unnatural death of patients; report to district attorney.
31. Medicine and drugs; free to indigent patients.
35. Commitment of alcoholics; petition; warrant of arrest; hearing; right to counsel; medical examination; findings; order; care and treatment; facilities; release.
39. Division of drug rehabilitation; establishment; budgetary requests; director; duties; rules and regulations; report; appointment of administrators and hearing officers; employees; civil service.
40. Drug rehabilitation advisory board; members; terms; appointments; expenses; chairman; duties; report.
41. Comprehensive plan for the treatment of drug dependent persons.
42. Comprehensive program for treatment of drug dependent persons; regions; facilities; supervision and control; annual report.
43. Powers and duties of division.
44. Licensing of facilities; provisional license or approval; term; rules and regulations; filing of information and failure thereto; penalties; inspection; complaint; review.
54. Liability for cost of treatment; rules and regulations.

§ 1. Definitions

The following words as used in this section and sections two to thirty-seven, inclusive, shall, unless the context otherwise requires, have the following meanings:

"Commissioner", the commissioner of mental health.

"Department", the department of mental health.

"District court", the district court within the jurisdiction of which a facility is located.

"Facility", a public or private facility for the care and treatment of mentally ill or mentally retarded persons, except for the intensive care unit for women and the Bridgewater State Hospital.

"Intensive Care Unit for Women or I.C.U.", a facility or part thereof established by the department either directly or indirectly through a contract for purchase of services, for the care and treatment of mentally ill women who have current and sustained histories of self-destructive behavior or serious assaultive behavior for whom good faith effort at treatment in another facility has been unsuccessful.

"Likelihood of serious harm", (1) a substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; (2) a substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or (3) a very substantial risk of physical impairment or injury to the person himself as manifested by evidence that such person's judgment is so affected that he is unable to protect himself in the community and that reasonable provision for his protection is not available in the community.

"Mentally retarded person", a person who, as a result of inadequately developed or impaired intelligence, as determined by clinical authorities as described in the regulations of the department is substantially limited in his ability to learn or adapt, as judged by established standards available for the evaluation of a person's ability to function in the community.

A mentally retarded person may be considered mentally ill provided that no mentally retarded person shall be considered mentally ill solely by virtue of his mental retardation.

"Qualified physician", a physician who is licensed pursuant to section two of chapter one hundred and twelve who is designated by and who meets qualifications required by the regulations of the department; provided that different qualifications may be established for different purposes of this chapter. A qualified physician need not be an employee of the department or of any facility of the department.

"Restraint", bodily physical force, mechanical devices, chemicals, confinement in a place of seclusion other than the placement of an inpatient or resident in his room for the night, or any other means which unreasonably limit freedom of movement.

"Superintendent", the superintendent or other head of a public or private facility.

"Dependent funds", those funds which a resident is unable to manage or spend himself as determined by the periodic review.

"Fiduciary", any guardian, conservator, trustee, representative payee as appointed by a federal agency, or other person who receives or maintains funds on behalf of another.

"Independent funds", those funds which a resident is able to manage or spend himself as determined by the periodic review.

"Funds", all cash, checks, negotiable instruments or other income or liquid personal property, and governmental and private pensions and payments, including payments pursuant to a Social Security Administration program.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 760, §§ 1, 1A; St. 1978, c. 367, §§ 55, 71A.

§ 5. Commitment or retention hearing; right to counsel; independent medical examination; notice

Whenever the provisions of this chapter require that a hearing be conducted in any court for the commitment or further retention of a person to a facility or to the Bridgewater state hospital or to the I.C.U., it shall be held as hereinafter provided. Such person shall have the right to be represented by counsel and shall have the right to present independent testimony. The court shall appoint counsel for such person whom it finds to be indigent and who is not represented by counsel, unless such person refuses the appointment of counsel. The court may provide an independent medical examination for such indigent person upon request of his counsel or upon his request if he is not represented by counsel. The person shall be allowed not less than two days after the appearance of his counsel in which to prepare his case and a hearing shall be conducted forthwith after such period unless counsel requests a delay. Notice of the time and place of hearing shall be furnished by the court to the department, the person, his counsel, and his nearest relative or guardian. The court may hold the hearing at the facility or said hospital or at the I.C.U.

Added by St.1970, c. 888, § 4. Amended by St.1973, c. 569, § 2; St.1978, c. 367, § 71B.

§ 7. Commitment and retention of dangerous persons; petition; notice; hearing

(*a*) The superintendent of a facility may petition the district court in whose jurisdiction the facility is located for the commitment to said facility and retention of any patient at said facility whom said superintendent determines that the failure to hospitalize would create a likelihood of serious harm by reason of mental illness.

(*b*) The medical director of the Bridgewater state hospital, the commissioner of mental health, or, with the approval of the commissioner of mental health, the superintendent of a facility, may petition the district court in whose jurisdiction the facility or hospital is located for the commitment to the Bridgewater state hospital of any male patient at said facility or hospital when it is determined that the failure to hospitalize in strict security would create a likelihood of serious harm by reason of mental illness.

(*c*) Whenever a court receives a petition filed under any provisions of this chapter for an order of commitment of a person to a facility, to the I.C.U. or to the Bridgewater state hospital, such court shall notify the person, and his nearest relative or guardian, of the receipt of such petition and of the date a hearing on such petition is to be held. The hearing shall be commenced within fourteen days of the filing of the petition unless a delay is requested by the person or his counsel.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 760, § 5; St.1976, c. 356, § 2; St.1978, c. 367, § 71C.

§ 10. Voluntary admissions; consultation with attorney; discharge; outpatients; veterans

(*a*) Pursuant to departmental regulations on admission procedures, the superintendent may receive and retain on a voluntary basis any person providing the person is in need of care and treatment and providing the admitting facility is suitable for such care and treatment. The application may be made (1) by a person who has attained the age of sixteen, (2) by a parent or guardian of a person on behalf of a person under the age of eighteen years, and (3) by the guardian of a person on behalf of a person under his guardianship. Prior to accepting an application for a voluntary admission, the superintendent shall afford the person making the application the opportunity for consultation with an attorney, or with a person who is working under the supervision of an attorney, concerning the legal effect of a voluntary admission. The superintendent may discharge any person admitted under the provisions of this paragraph at any time he deems such discharge in the best interest of such person, provided, however, that if a parent or guardian made the application for admission, fourteen days notice shall be given to such parent or guardian prior to such discharge.

(*b*) Pursuant to departmental regulations, the superintendent of a facility may treat persons as outpatients providing application for outpatient treatment is made in accordance with the application provisions of paragraph (*a*). The superintendent may, in the best interest of the person, discontinue the outpatient treatment of a person at any time.

(*c*) The chief officer of any facility of the Veterans Administration within the commonwealth may admit eligible veterans under the provisions of this chapter and thereupon shall be vested with the same powers as the department has under this chapter with respect to retention or discharge.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 575, § 1; St.1973, c. 925, § 48; St.1976, c. 356, § 4.

§ 12. Emergency restraint of dangerous persons; application for hospitalization; duration; examination; notice to district court; hearing; voluntary admissions; discharge

(*a*) Any physician who is licensed pursuant to section two of chapter one hundred and twelve after examining a person has reason to believe that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness may restrain or authorize the restraint of such person and apply for the hospitalization of such person for a ten day period at a public facility or at a private facility authorized for such purposes by the department. If an examination is not possible because of the emergency nature of the case and because of the refusal of the person to consent to such examination, the physician on the basis of the facts and circumstances may determine that hospitalization is necessary and may apply therefor. In an emergency situation if a physician is not available, a police officer, who believes that failure to hospitalize a person would create a likelihood of serious harm by reason of mental illness may restrain such person and apply for the hospitalization of such person for a ten day period at a public facility or a private facility authorized for such purpose by the department. An application for hospitalization shall state the reasons for the restraint of such person and any other relevant information which may assist the admitting physician or physicians. Whenever practicable prior to transporting such person, the applicant shall telephone or otherwise communicate with a facility to describe the circumstances and known clinical history and to determine whether the facility is the proper facility to receive such person and also to give notice of any restraint to be used and to determine whether such restraint is necessary.

(*b*) If the application for hospitalization under the provisions of this section is made by a physician specifically designated to have the authority to admit to a facility in accordance with the regulations of the department, such person shall be admitted to the facility immediately after his reception. If the application is made by someone other than a designated physician, such person shall be given a psychiatric examination by a designated physician immediately after his reception at such facility. If the physician determines that failure to hospitalize such person would create a likelihood of serious harm by reason of mental illness he may admit such person to the facility for care and treatment.

(*c*) No person shall be admitted to a facility under the provisions of this section unless he, or his parent or legal guardian in his behalf, is given an opportunity to apply for voluntary admission under the provisions of paragraph (*a*) of section ten and unless he, or such parent or legal guardian has been informed (1) that he has a right to such voluntary admission, and (2) that the period of hospitalization under the provisions of this section cannot exceed ten days. At any time during such period of hospitalization, the superintendent may discharge such person if he determines that such person is not in need of care and treatment.

(*d*) A person shall be discharged at the end of the ten-day period unless the superintendent applies for a commitment under the provisions of sections seven and eight of this chapter or the person remains on a voluntary status.

(*e*) Any person may make application to a district court justice for a ten-day commitment to a facility of a mentally ill person, whom the failure to confine would cause a likelihood of serious harm. After hearing such evidence as he may consider sufficient, a district court justice may issue a warrant for the apprehension and appearance before him of the alleged mentally ill person, if in his judgment the condition or conduct of such person makes such action necessary or proper. Following apprehension, the court shall have the person examined by a physician designated to have the authority to admit to a facility in accordance with the regulations of the department. If said physician reports that failure to hospitalize the person would create a likelihood of serious harm by reason of mental illness, the court may order the person committed to a facility for a period not to exceed ten days, but the superintendent may discharge him at any time within the ten-day period.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 760, §§ 9, 10; St. 1975, c. 114, §§ 1, 2.

§ 15. Competence to stand trial or criminal responsibility; examinations; reports; findings; hearings; orders; hospitalization; period of observation; commitment; delinquents

(*a*) Whenever a court of jurisdiction doubts whether a defendant in a criminal case is competent to stand trial or is criminally responsible by reason of mental illness or mental defect, it may at any stage of the proceedings after the return of an indictment or the issuance of a criminal complaint against the defendant, order an examination of such defendant to be conducted by one or more qualified physicians. Whenever practicable, examinations shall be conducted at the court house or place of detention where the person is being held. When an examination is ordered, the court shall instruct the examining physician or physicians in the law for determining mental competence to stand trial and criminal responsibility.

(*b*) After the examination described in paragraph (*a*), the court may order that the person be hospitalized at a public facility or, if such person is a male and appears to require strict security, at the Bridgewater state hospital, for a period not to exceed twenty days for observation and further examination, if the court has reason to believe that such observation and further examination are necessary in order to determine whether mental illness or mental defect have so affected a person that he is not competent to stand trial or not criminally responsible for the crime or crimes with which he has been charged. Copies of the complaints or indictments and the physician's report under paragraph (*a*) shall be delivered to the facility or said hospital with the person. If, before the expiration of such twenty-day period, an examining qualified physician believes that observation for more than twenty days is necessary, he shall so notify the court and shall request in writing an extension of the twenty-day period, specifying the reason or reasons for which such further observation is necessary. Upon the receipt of such request, the court may extend said observation period, but in no event shall the period exceed forty days from the date of the initial court order of hospitalization; provided, however, if the person requests continued care and treatment during the pendency of the criminal proceedings against him and the superintendent or medical director agrees to provide such care and treatment, the court may order the further hospitalization of such person at the facility or the Bridgewater state hospital.

(*c*) At the conclusion of the examination or the observation period, the examinining qualified physician or physicians shall forthwith give to the court written signed reports of their findings including the clinical findings bearing on the issue of competence to stand trial or criminal responsibility. Such reports shall also contain an opinion, supported by clinical findings, as to whether the defendant is in need of treatment and care offered by the department.

(*d*) If on the basis of such reports the court is satisfied that the defendant is competent to stand trial, the case shall continue according to the usual course of criminal proceedings; otherwise the court shall hold a hearing on whether the defendant is competent to stand trial; provided that at any time before trial any party to the case may request a hearing on whether the defendant is competent to stand trial. A finding of incompetency shall require a preponderance of the evidence. If the defendant is found incompetent to stand trial, trial of the case shall be stayed until such time as the defendant becomes competent to stand trial, unless the case is dismissed.

(*e*) After a finding of guilty on a criminal charge, and prior to sentencing, the court may order a psychiatric or other clinical examination and, after such examination, it may also order a period of observation in a facility, or at the Bridgewater state hospital if the court determines that strict security is required and if such person is a male. The purpose of such observation or examination shall be to aid the court in sentencing. Such period of observation or examination shall not exceed forty days. During such period of observation, the superintendent or medical director may petition the court for commitment of such person. The court may hear the petition as provided in sections seven and eight, and if the court makes the necessary findings it may in its discretion commit the person to a facility or the Bridgewater state hospital. Such order of commitment shall be valid for a period of six months. All subsequent proceedings for commitment shall take place under the provisions of sections seven and eight in the district court which has jurisdiction of the facility or hospital.

(*f*) In like manner to the proceedings under paragraphs (*a*), (*b*), (*c*) and (*e*) of this section, a court may order a psychiatric examination or a period of observation for an alleged delinquent in a facility to aid the court in its disposition. Such period of observation shall not exceed forty days.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 760, § 12; St.1973, c. 569, §§ 5 to 9; St.1978, c. 478, § 70.

§ 18. Hospitalization of mentally ill prisoners; examination; reports; hearings; commitment; voluntary admission; reduction of sentence; discharge

(*a*) If the person in charge of any place of detention within the commonwealth has reason to believe that a person confined therein is in need of hospitalization by reason of mental illness at a facility of the department or at the Bridgewater state hospital, he shall cause such prisoner to be examined at such place of detention by a physician or physicians designated by the department as qualified to perform such examination. Said physician or physicians shall report the results of the examination to the district court which has jurisdiction over the place of detention or, if the prisoner is awaiting trial, to the court which has jurisdiction of the criminal case. Such report shall include an opinion, with reasons therefor, as to whether such hospitalization is actually required. The court which receives such report may order the prisoner to be taken to a facility or, if a male, to the Bridgewater state hospital to be received for examination and observation for a period not to exceed thirty days. After completion of such examination and observation, a written report shall be sent to such court and to the person in charge of the place of detention. Such report shall be signed by the physician or physicians conducting such examination and shall contain an evaluation, supported by clinical findings, of whether the prisoner is in need of further treatment and care at a facility of, if a male, the Bridgewater state hospital by reason of mental illness. The person in charge of the place of detention shall have the same right as a superintendent of a facility to file a petition with the court which received the results of the examination for the commitment of the person to a facility or to the Bridgewater state hospital; provided that, notwithstanding the court's failure, after an initial hearing or after any subsequent hearing, to make the finding required for commitment to the Bridgewater state hospital, the prisoner shall be confined at said hospital if the findings required for commitment to a facility are made and if the commissioner of correction certifies to the court that confinement of the prisoner at said hospital is necessary to insure his continued retention in custody. An initial court order of commitment issued subject to the provisions of this section shall be valid for a six-month period, and all subsequent commitments during the term of the sentence shall take place under the provisions of sections seven and eight and shall be valid for one year.

(*b*) Notwithstanding any contrary provision of general or special law, a prisoner who is retained in any place of detention within the commonwealth and who is in need of care and treatment in a facility may, with the approval of the person in charge of such place of detention, apply for voluntary admission under the provisions of paragraph (*a*) of section ten.

(*c*) At the commencement of hospitalization under the provisions of paragraph (*a*) or paragraph (*b*) the department of correction shall enter in the patient record of such prisoner the date of the expiration of the sentence of the prisoner. Where applicable, the provisions of sections one hundred and twenty-nine, one hundred and twenty-nine A, one hundred and twenty-nine B and one hundred and twenty-nine C of chapter one hundred and twenty-seven may be applied to reduce such sentence, and on such date the prisoner shall be discharged; provided, however, that if the superintendent or other head of a facility or the medical director of the Bridgewater state hospital determines that the discharge of the prisoner committed subject to the provisions of paragraph (*a*) would create a likelihood of serious harm by reason of mental illness, he shall petition the district court having jurisdiction over the facility prior to the date of expiration to order the commitment of such person to a facility or to the Bridgewater state hospital under the provisions of this chapter other than paragraph (*a*); and provided, further, that any prisoner resident in a facility subject to the provisions of paragraph (*b*) shall be free to leave such facility subject to the provisions of section eleven.

(*d*) In the event the provisions of this chapter require the release of a prisoner from a facility or from the Bridgewater state hospital prior to the date of expiration of his sentence calculated under the provisions of paragraph (*c*), such prisoner shall be forthwith returned to the place of detention from which he was transferred to such facility or to said hospital.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 760, § 17; St.1973, c. 569, §§ 13, 14.

§ 28A. Violent or unnatural death of patients; report to district attorney

Upon the death of any person confined to a mental institution under the control of the department, the superintendent of such institution or director of I.C.U. shall, if he is of the opinion that the death may have resulted from violence or unnatural causes, immediately notify the district attorney for the district in which the death occurred, giving him the name and address of the person who died and the cause of death.

Added by St.1971, c. 530. Amended by St.1978, c. 367, § 71*L*.

§ 31. Medicine and drugs; free to indigent patients

Medicine and drugs shall be furnished free of charge to any patient at the outpatient clinic of a facility of the department who, in the opinion of the head of the facility or his representatives, is indigent and requires them. For the purposes of this section, the determination as to whether the patient is indigent shall be final; provided, however, that all medicines and drugs furnished a patient who meets the eligibility requirements for medical assistance under chapter one hundred and eighteen E shall be provided in accordance with the provisions of that chapter.

Added by St.1970, c. 888, § 4.

§ 35. Commitment of alcoholics; petition; warrant of arrest; hearing; right to counsel; medical examination; findings; order; care and treatment; facilities; release

For the purpose of this section, "alcoholic" shall mean a person who chronically or habitually consumes alcoholic beverages to the extent that (1) such use substantially injures his health or substantially interferes with his social or economic functioning, or (2) he has lost the power of self-control over the use of such beverages.

Any police officer, physician, spouse, blood relative or guardian may petition in writing any district court for an order of commitment of a person whom he has reason to believe is an alcoholic. Upon receipt of a petition for an order of commitment of a person and any sworn statements the court may request from the petitioner, the court shall immediately schedule a hearing on the petition and shall cause a summons and a copy of the application to be served upon the person in the manner provided by section twenty-five of chapter two hundred and seventy-six. In the event of the person's failure to appear at the time summoned, the court may issue a warrant for the person's arrest. The person shall have the right to be represented by legal counsel and may present independent expert or other testimony. If the court finds the person indigent, it shall immediately appoint counsel. The court shall order examination by a qualified physician.

If, after a hearing, the court based upon competent medical testimony finds that said person is an alcoholic and that there is a likelihood of serious harm as a result of his alcoholism, it may order such person to be committed for a period not to exceed fifteen days. Such commitment shall be for the purpose of inpatient care in public or private facilities approved by the department of public health under the provisions of chapter one hundred and eleven B for the care and treatment of alcoholism. The person may be committed to the Massachusetts correctional institution at Bridgewater, if a male, or at Framingham, if a female, provided that there are no suitable facilities available under chapter one hundred and eleven B; and provided, further, that the person so committed shall be housed and treated separately from convicted criminals. A person so committed may be released prior to the expiration of the period of commitment upon determination by the superintendent that release of said person will not result in a likelihood of serious harm. Said person shall be encouraged to consent to further treatment and shall be allowed voluntarily to remain in the facility for such purposes. The department of mental health, in conjunction with the department of public health, shall maintain a roster of public and private facilities available, together with the number of beds currently available, for the care and treatment of alcoholism and shall make it available to the district courts of the commonwealth on a monthly basis.

Nothing in this section shall preclude any public or private facility for the care and treatment of alcoholism, including the separated facilities at the Massachusetts correctional institutions at Bridgewater and Framingham, from treating persons on a voluntary basis.

Added by St.1970, c. 888, § 4. Amended by St.1971, c. 1076, § 4; St.1973, c. 643, §§ 1, 2.

§ 39. Division of drug rehabilitation; establishment; budgetary requests; director; duties; rules and regulations; report; appointment of administrators and hearing officers; employees; civil service

There shall be in the department a division of drug rehabilitation. The division shall take cognizance of all matters affecting drug dependency in the commonwealth. The director shall be the chief administrative and executive officer of the division. He shall administer the rules and regulations of the division and shall prepare proposed rules and regulations for the consideration of the commissioner. He shall submit annually to the commissioner a report containing recommendations for legislation relating to drug dependency.

The approval of the commissioner shall be required for any budgetary request of the division, the planning and construction of facilities by the division, any exercise of the power of eminent domain by the division, all contracts and agreements entered into by the division relating to the use and occupation of real property, and any application by the division for a grant or loan from the federal government.

The director shall, subject to the approval of the commissioner, appoint the administrator of each facility operated by the division pursuant to this chapter. Each such administrator shall be a person qualified by training and experience to operate a facility for the treatment of drug dependent persons or persons in need of immediate assistance due to the use of a dependency related drug.

The director may, subject to the approval of the commissioner, appoint such hearings officers as may be necessary. Hearings of the division shall be conducted by the director or a hearings officer. The director may also, subject to the approval of the commissioner, establish such other positions and employ such additional personnel and consultants as he may consider appropriate to carry out the provisions of sections thirty-eight to fifty-five, inclusive. The provisions of chapter thirty-one shall not apply to the director, physicians, psychiatrists, and psychologists who have full medical, psychiatric or psychological responsibility, whichever is applicable, as opposed to administrative responsibility, or to nurses; provided, however, that all persons so employed and all positions established which, as a condition of receiving federal grants for programs and activities to which federal standards for a merit system of personnel administration relate, make necessary the application of the provisions of the civil service law shall be subject to the provisions of chapter thirty-one if such federal standards are uniform in all states.

Added by St.1970, c. 888, § 4.

§ 40. Drug rehabilitation advisory board; members; terms; appointments; expenses; chairman; duties; report

There shall be in the division a drug rehabilitation advisory board, consisting of the commissioners of public health, correction, rehabilitation and education, the commissioner of youth services, the commissioner of probation and seven experts in the field of drug dependency appointed by the governor, at least one of whom shall be a rehabilitated drug dependent person. Of the members first appointed, two shall be appointed for a term of one year, two shall be appointed for a term of two years, and three shall be appointed for a term of three years. Thereafter the governor shall appoint members to succeed those appointed members whose terms expire to serve for terms of three years. Each appointed member shall serve until his successor is appointed and has qualified. No member shall be appointed to serve more than two consecutive three year terms. The members of the advisory board shall serve without compensation but shall be reimbursed for their expenses actually and necessarily incurred in the discharge of their duties. The governor shall annually designate the chairman of the advisory board from among its members.

The advisory board shall in its general advisory capacity assist the director in coordinating the efforts of all public agencies and private organizations and individuals within the commonwealth concerned with the prevention or treatment of drug dependency, providing for the most efficient and effective utilization of resources and facilities, and developing a comprehensive program for treatment of drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug. The advisory board shall make an annual report to the governor and a copy thereof shall be made available to the commissioner and to the secretary of human services.

The commissioner shall be a member ex officio of the advisory board and in such capacity shall advise and make recommendations to the advisory board and otherwise assist the advisory board in the performance of its functions under sections thirty-eight to fifty-five, inclusive.

Added by St.1970, c. 888, § 4. Amended by St.1974, c. 827, § 6.

§ 41. Comprehensive plan for the treatment of drug dependent persons

The director shall, subject to the approval of the commissioner, prepare and submit to the governor, and from time to time amend, a comprehensive plan for the treatment in public, private, and federal facilities of drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug. The director, in developing such plan, shall consult with the advisory board, officials of appropriate departments or agencies of the federal government and the commonwealth and its political subdivisions, and private organizations and individuals with a view toward providing coordinated and integrated services on the community level. The plan shall include a detailed estimate of the cost of its implementation and of the extent to which funds, property or services may be available from the commonwealth or any of its political subdivisions, the federal government or any private source.

Added by St.1970, c. 888, § 4.

§ 42. Comprehensive program for treatment of drug dependent persons; regions; facilities; supervision and control; annual report

The division shall establish a comprehensive program for the treatment of drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug. The director, subject to the approval of the commissioner, shall divide the commonwealth into not less than four nor more than ten regions for the conduct of said program and shall establish standards for the development of the program on the regional level. In establishing such regions, consideration shall be given to city, town and county lines, population concentrations, the regions established by the department of mental health pursuant to section seventeen of chapter nineteen, and any relevant uniform rules and regulations promulgated by the commissioner of administration and finance.

The program of the division shall include provision for at least the following:

(*a*) Facilities wherein treatment is available to persons in need of immediate assistance due to the use of a dependency related drug;

(*b*) Facilities wherein inpatient treatment is available which shall, to the extent appropriate and possible, be affiliated with and constitute an integral part of the medical service of a general hospital;

(*c*) Facilities wherein outpatient treatment is available;

(*d*) Facilities wherein residential aftercare is available, such as in halfway houses;

(*e*) Penal facilities.

The department shall provide sufficient treatment facilities, public or private, for the treatment of drug dependent persons committed or admitted pursuant to sections thirty-eight to fifty-five, inclusive.

The division shall maintain, supervise and control all facilities operated by it pursuant to said sections thirty-eight to fifty-five, inclusive, and all such facilities shall be staffed with an adequate number of qualified and trained personnel. The administrator of each such facility shall make an annual report of its activities to the director in such form and manner as the director deems appropriate.

All appropriate resources, particularly community mental health centers, shall be coordinated with and utilized in the program whenever possible.

The director shall prepare and publish annually a list of all facilities, including federal facilities, operating in accordance with this chapter and shall make it available to all district and superior court judges within the commonwealth on an annual basis and to members of the public upon request. Such list shall include, but not be limited to the following:

(*a*) eligibility for treatment

(*b*) scope of treatment offered

(*c*) applicability facility fees

(*d*) last known patient capacity

(*e*) facilities for emergency treatment

Notices shall be sent quarterly by the director to all district and superior court judges within the commonwealth containing updated information on such list. Said notices shall also state the last known waiting period for admission to each facility.

Added by St.1970, c. 888, § 4. Amended by St.1974, c. 827, § 7.

§ 43. Powers and duties of division

The division is hereby authorized, empowered and directed to:

(1) Plan, construct, establish, cause to be established and maintain such facilities as may be necessary or desirable for the conduct of its program;

(2) Acquire, hold and dispose of personal property;

(3) Acquire by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the power of eminent domain, and lease, hold and dispose of, real property or any interest therein, for the establishment of facilities under sections thirty-eight to fifty-five, inclusive; provided, however, that no real property or any interest therein used in whole or in part for residential purposes may be so taken by eminent domain;

(4) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution

of its powers; including, but not limited to, contracts with public and private departments, agencies, and facilities to pay them for services actually rendered or furnished to drug dependent persons or persons in need of immediate assistance due to the use of a dependency related drug at rates to be established pursuant to chapter six A; provided, however, that the commissioner shall promulgate rules and regulations establishing the standards and procedures which shall govern such fee-for-service contracting, which standards and procedures shall include, but shall not be limited to, the proper operation of facilities, the need for fee-for-service contracting in the community, and the qualifications of the applicant;

(5) Solicit and accept for use in relation to the purposes of said sections thirty-eight to fifty-five, inclusive, any gift of money or property made by will or otherwise, and any grant or loan of money, services or property from the federal government, the commonwealth or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in connection with the application for such grant; provided, however, that any money received under this subsection shall be turned over to the state treasurer to be kept in a separate fund in the treasury;

(6) Develop, encourage and foster statewide, regional and local plans and programs for the prevention and treatment of drug dependency in cooperation with interested public agencies and private organizations and individuals and provide technical assistance and consultation services for these purposes;

(7) Coordinate the efforts and enlist the assistance of all public agencies and private organizations and individuals interested in the prevention and treatment of drug dependency;

(8) Cooperate with the department of correction in establishing and conducting programs to provide treatment for drug dependent persons in penal institutions;

(9) Cooperate with the department of education, schools, police departments, courts, and other public agencies and private organizations and individuals in establishing programs for the prevention and treatment of drug dependency and in preparing curriculum materials for use at all levels of public school education;

(10) Prepare, publish and disseminate educational material dealing with the prevention, nature and effects of drug dependency and the benefits of rehabilitation;

(11) Develop and implement, as an integral part of treatment programs established pursuant to said sections thirty-eight to fifty-five, inclusive, an educational program for use in the treatment of drug dependent persons, especially drug dependent persons who are not drug addicts, which program shall include the dissemination of

factual information concerning the nature and effects of dependency related drugs and drug dependency;

(12) Organize and foster training programs for professional and nonprofessional workers in the treatment of drug dependent persons;

(13) Keep records and engage in research and the gathering of statistics relevant to the purposes of said sections thirty-eight to fifty-five, inclusive;

(14) Utilize the support and assistance of interested persons in the community, particularly rehabilitated drug dependent persons, in encouraging voluntary participation in the program by drug dependent persons and persons in need of immediate assistance due to the use of a dependency related drug;

(15) Serve as a clearing house for information relating to drug dependency;

(16) Approve and license public and private facilities in accordance with section forty-four; and

(17) Do all other acts and things necessary or convenient to carry out the powers expressly granted to it for the exercise of its powers and the performance of its duties.

Added by St.1970, c. 888, § 4. Amended by St.1973, c. 1229, § 4S.

§ 44. Licensing of facilities; provisional license or approval; term; rules and regulations; filing of information and failure thereto; penalties; inspection; complaint; review

The division shall issue for a term of two years, and may renew for like terms, a license, subject to revocation by it for cause, to any person, partnership, corporation, society, association or other agency or entity of any kind, other than a licensed general hospital or a department, agency or institution of the federal government, the commonwealth or any political subdivision thereof, deemed by it to be responsible and suitable to establish and maintain a facility and to meet applicable licensure standards and requirements. In the case of a department, agency or institution of the commonwealth or any political subdivision thereof, the division shall grant approval to establish and maintain a facility for a term of two years, and may renew such approval for like terms, subject to revocation by it for cause. The division may issue a provisional license or approval where a facility has not previously operated, or is operating but is temporarily unable to meet applicable standards and requirements. The commissioner shall promulgate rules and regulations establishing licensure and approval standards and requirements, but such standards and requirements shall concern only:

(1) the health standards to be met by a facility,

(2) misrepresentations as to the treatment to be afforded patients at a facility,

(3) licensing fees, and

(4) procedures for making and approving license applications.

(5) the services and treatment provided by programs.

(6) certification of capability of self-preservation.

Each facility shall file with the division from time to time, on request, such data, statistics, schedules or information as the division may reasonably require for the purposes of this section, and any licensee or other person operating a private facility who fails to furnish any such data, statistics, schedules or information as requested, or who files fraudulent returns thereof, shall be punished by a fine of not more than five hundred dollars.

The division, after holding a hearing in accordance with sections ten through thirteen, inclusive, of chapter thirty A, may refuse to grant, suspend, revoke, limit or restrict the applicability of or refuse to renew any license or approval for the following reasons only:

(1) for failure to meet the requirements of its rules and regulations under this section or

(2) if there is a reasonable basis for the division to conclude that there is a discrepancy between representations by a facility as to the treatment services to be afforded patients and the treatment services actually rendered or to be rendered or

(3) for failure to comply with the provisions of section forty-seven.

The division may temporarily suspend a license or approval in an emergency without holding a prior hearing; provided, however, that upon request of an aggrieved party, a hearing in accordance with sections ten through thirteen, inclusive, of chapter thirty A shall be held as soon after the license or approval is suspended as possible. Any party aggrieved by a final decision rendered by the director or a hearings officer after a hearing of the division pursuant to this section may petition for judicial review thereof in accordance with the provisions of section fourteen of chapter thirty A.

No person, partnership, corporation, society, association, or other agency, or entity of any kind, other than a licensed general hospital, a department, agency or institution of the federal government, the commonwealth or any political subdivision thereof, shall operate a facility without a license and no department, agency or institution of the commonwealth or any political subdivision thereof shall operate a facility without approval from the division pursuant to this section. The superior court shall have jurisdiction in equity upon petition of the division to restrain any violation of the provisions of this section and to take such other action as equity and justice may require to enforce its provisions.

Whoever knowingly establishes or maintains a private facility other than a licensed general hospital without a license granted pursuant to this section shall, for a first offense, be punished by a fine of not more than five hundred dollars and for each subsequent offense by a fine of not more than one thousand dollars or imprisonment for not more than two years, or both.

Each facility shall be subject to visitation and inspection by the division and the division shall inspect each facility prior to granting or renewing a license or approval. The division may examine the books and accounts of any facility if it seems such examination necessary for the purposes of this section.

The division is hereby authorized to make a complaint to a district court or to a justice of the superior court, who may thereupon issue a warrant to any officers or employees of the division authorizing them to enter and inspect at reasonable times, and to examine the books and accounts of, any private facility refusing to consent to such inspection or examination by the division which the division has reason to believe is operating in violation of the provisions of sections thirty-eight to fifty-five, inclusive. Refusal by the operator or owner to allow such entry and inspection pursuant to such a warrant shall for a first offense be punished by a fine of not more than one hundred dollars and for each subsequent offense by a fine of not more than one thousand dollars or imprisonment for not more than two years, or both.

For the purposes of this section, the term facilities shall include penal facilities.

Added by St.1970, c. 888, § 4. Amended by St.1974, c. 827, §§ 8 to 11.

§ 54. Liability for cost of treatment; rules and regulations

Any patient in a public facility, or the estate, spouse or adult child of such patient, or, if the patient is a minor, the parent of such patient if of sufficient financial ability, shall be liable to such facility for the cost of maintenance and treatment of the patient therein in accordance with rates established pursuant to chapter six A. If a person is a patient in a private facility pursuant to an agreement between the facility and the division, and neither the patient nor the estate, spouse or adult child of such patient, or, if the patient is a minor, the parent of such patient is of sufficient financial ability to pay the cost of maintenance and treatment of the patient therein, and the patient is not entitled to the payment of such cost from any other source, the division shall pay the cost of such maintenance and treatment in accordance with rates established pursuant to chapter six A.

The division shall promulgate rules and regulations governing financial ability which shall take into consideration the income, savings and other personal and real property of the person required to pay, as well as any support actually being furnished by him to any person whom he may be required by law to support.

Added by St.1970, c. 888, § 4. Amended by St.1973, c. 1229, § 4T.

CHAPTER 123A

CARE, TREATMENT AND REHABILITATION OF SEXUALLY DANGEROUS PERSONS

Sec.

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§ 1. Sexually dangerous person, defined

The words "sexually dangerous person" as used in this chapter shall have the following meaning:—Any person whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive behavior and either violence, or aggression by an adult against a victim under the age of sixteen years, and who as a result is likely to attack or otherwise inflict injury on the objects of his uncontrolled or uncontrollable desires.

Added by St.1958, c. 646, § 1.

§ 2. Treatment center and branches; establishment

The commissioner of mental health shall establish and maintain, subject to the jurisdiction of the department of mental health, a treatment center, hereinafter in this chapter called the center, at a correctional institution approved by the commissioner of correction, for the care, custody, treatment and rehabilitation of persons described in section one. The commissioner of correction shall appoint such custodial personnel as may be required for such center. Such custodial personnel shall be subject to the control of the commissioner of mental health with respect to the care, treatment and rehabilitation of persons in their custody, but shall at all times be under the administrative, operational and disciplinary control of the commissioner of correction. The commissioner of mental health shall appoint to such center, in addition to the personnel appointed by the commissioner of correction, adequate personnel for the care, treatment and rehabilitation of such persons committed to their care.

Added by St.1958, c. 646, § 1. Amended by St.1959, c. 615.

§ 3. Binding over to superior court; transmittal of records

Notwithstanding any other provision of law when a person is brought before a district court charged with the crime of indecent assault or indecent assault and battery, indecent assault and battery on a child under the age of fourteen, open and gross lewdness and lascivious behavior, unnatural and lascivious acts with another person or with a child under the age of sixteen, lewd, wanton and lascivious behavior or indecent exposure, or an attempt to commit any such crime, the court shall, if it appears that said person is guilty of the crime and appears to be a sexually dangerous person, commit or bind over said person for trial in the superior court. In such cases the clerk of the district court shall forthwith transmit to the clerk of the superior court a copy of the complaint and of the record, the original recognizances, a list of the witnesses, a statement of the expenses and the appearance of the attorney for the defendant, if any is entered, and the report of the department of mental health as to the mental condition of the defendant if such report has been filed under the provisions of section one hundred A of chapter one hundred and twenty-three, and no other papers need be transmitted.

Added by St.1958, c. 646, § 1.

§ 4. Commitment to treatment center; examination; probation record

Upon the determination of guilt of a person in the superior court of the crime of indecent assault or indecent assault and battery, indecent assault and battery on a child under the age of fourteen, rape, rape of a female child under sixteen, carnal knowledge and abuse of a female child under sixteen, assault with intent to commit rape, open and gross lewdness and lascivious behavior, incest, sodomy, buggery, unnatural and lascivious acts with another person or with a child under the age of sixteen, lewd, wanton [1] lascivious behavior or indecent exposure, or an attempt to commit any such crime, the court, upon its own motion, or upon motion of the district attorney, prior to imposing sentence, but subject to the issuance of reasonable notice informing such person that it is considering his commitment to the center, may commit him to the center or to a suitable branch thereof for a period not exceeding sixty days for the purpose of examination and diagnosis under the supervision of not less than two psychiatrists who shall, within said period, file with said court a written report of such examination and diagnosis, and their recommendations for the disposition of such person. The court shall supply to the examining psychiatrists copies of the court record, and the probation officer shall supply them with the probation record of the person committed for examination. The probation record shall contain a history as such person's previous offences and previous psychiatric examinations and such other information as may be helpful to assist such psychiatrists in making their diagnosis.

Added by St.1958, c. 646, § 1. Amended by St.1974, c. 324, § 1.

[1] So in enrolled bill. The word "and" probably should appear here.

§ 5. Sentencing; commitment to treatment center; hearing; probation

If the report filed with the court under section four clearly indicates that such person is a sexually dangerous person, the court shall give notice to such person that a hearing will be held to determine whether or not he is a sexually dangerous person.

Upon the motion of such person or upon its own motion the court shall, if necessary to protect the rights of such person, appoint counsel for him. Such person shall be entitled to have process issued out of the court to compel the attendance of witnesses in his behalf. Upon such hearing it shall be competent to introduce evidence of the person's past criminal and psychiatric record and any other evidence that tends to indicate that he is a sexually dangerous person. Any psychiatric report filed under this chapter shall be admissible in evidence in such proceeding. The court may, in its discretion, exclude the general public from attendance at such hearing, and the proceeding shall be summarized in writing.

If the court finds upon such hearing that the person is not a sexually dangerous person, it shall proceed as provided by law upon a determination of guilt of the original offence. If the court finds that the person is a sexually dangerous person, it may, in lieu of the sentence required by law for the original offence, commit such person to the center, or a branch thereof, for an indeterminate period of a minimum of one day and a maximum of such person's natural life. The court may grant probation or suspend the commitment upon the condition that such person receive out-patient treatment and upon any other condition it might deem suitable, if the department of mental health recommends such person as a suitable subject for such out-patient treatment. The court shall forward its order to the commissioner of correction who shall thereupon transfer the person to the center, or a branch thereof, for the purpose of treatment and rehabilitation, where he shall be held until released under the provisions of section nine. Persons committed shall be subject to all laws, rules and regulations which govern inmates of the institution to which they have been committed, in so far as may be compatible with the treatment provided for by this chapter, and they shall be entitled to such rights and privileges of such inmates, in so far as may be compatible with such treatment.

Added by St.1958, c. 646, § 1.

§ 6. Commitment of prisoners to treatment center; petition of district attorney; notice; right to counsel; hearing

If a prisoner under sentence in any jail, house of correction or prison, or in the custody of the department of youth services, appears to the sheriff, keeper, master, superintendent or commissioner of youth services who has him in custody or to the district attorney for the district in which such prisoner was sentenced to be a sexually dangerous person and in need of the care and treatment provided at the center, such officer may notify the commissioner of mental health, who shall thereupon cause such prisoner to be examined by a psychiatrist at the institution wherein he is confined. Such psychiatrist shall report the results of his examination in writing to the sheriff, keeper, master or superintendent, commissioner of youth services, or district attorney, and if such report indicates that such person may be a sexually dangerous person, the sheriff, keeper, master or superintendent, commissioner of youth services, or district attorney, after having notified said person of the nature of the proceedings and the possibility of his commitment to the center, shall thereupon transmit the report to the clerk of the courts for the county wherein such prisoner was sentenced, and if such prisoner was sentenced in Suffolk county, to the clerk of the superior court for the transaction of criminal business, together with a motion to commit such person to the center or a suitable branch thereof for examination and diagnosis for a period not exceeding sixty days. At least fourteen days prior to acting upon said motion, the court shall notify said person that it is considering his commitment to the center or a suitable branch thereof for a period not exceeding sixty days, and shall inform said person of his right to be represented by counsel during the pendency of said motion or any subsequent commitment petition. If the court grants the motion, it shall commit such person under the provisions of section four insofar as may be applicable.

If there be no sitting of the superior court in the appropriate county at the time the motion and report are transmitted to the clerk, the clerk shall then transmit a copy of the motion and report to the administration justice for the superior court department, who may act upon the motion.

If the report of the psychiatrists to the court as required under section four, indicates that such prisoner is not a sexually dangerous person, the court shall order such prisoner to be reconveyed to the institution wherein he was serving his sentence, there to be held until the termination of his sentence or until otherwise discharged.

If such report clearly indicates that such prisoner is a sexually dangerous person, the clerk shall thereupon notify the court and the district attorney, and the district attorney shall file a petition for commitment of the prisoner to the center, or a branch thereof, for treatment and rehabilitation, and he shall give notice to the prisoner or to his parents, spouse, issue, next of kin, guardian, or next friend, if it appears to the district attorney that such prisoner is incapable of conducting his contest to the report. The court may require such further notice as it deems necessary to protect the interest of the prisoner, may continue the hearing pending such notice and may appoint a guardian ad litem, if necessary. The hearing shall be conducted in the manner described in section five.

Pending the completion of such hearing, the court may order that the prisoner be retained in the custody of the superintendent of the institution in which the center, or branch thereof, is located or may commit him to the custody of a sheriff or keeper of a jail or place of detention, until such time as the matter is heard on the merits.

If the court finds that the prisoner is not a sexually dangerous person, it shall order him to be reconveyed to the institution wherein he was serving his sentence, there to be held until the termination of his sentence or until otherwise discharged. If the court finds that such prisoner is a sexually dangerous person, it shall commit him to the center, or a branch thereof, for an indeterminate period of a minimum of one day and a maximum of such person's natural life, for the purpose of treatment and rehabilitation, or it may commit such person to a mental institution or place him upon outpatient treatment, or make such other disposition upon the recommendation of the department of mental health consistent with the purpose of treatment and rehabilitation. Such prisoner shall be held in custody under sufficient security to protect society, and he shall be subject to all laws, rules and regulations which govern inmates of the institution to which he has been committed, in so far as may be compatible with the treatment provided for by this chapter, and he shall be entitled to such rights and privileges of such inmates, in so far as may be compatible with such treatment.

Added by St.1958, c. 646, § 1. Amended by St.1969, c. 838, § 58; St.1974, c. 324, §§ 2, 3; St.1978, c. 478, § 72.

§ 6A. Restrictions on movements of committed persons

Any person committed as a sexually dangerous person under the provisions of this chapter may be restricted to the buildings and the secured grounds of the center by the court that ordered the commitment after a hearing on the issuance of said restrictions which may be combined with the hearing held pursuant to section five or six. The court shall set forth in writing its reasons for the issuance of said restrictions. If the director of the treatment center communicates his intention to remove or modify such restrictions in writing to the court that ordered the commitment and within fourteen days thereafter the court does not order that such action be stayed, such restrictions may be removed or so modified by said director. If the court orders a stay of such action, the director shall refer the matter to the parole board, which shall within thirty days thereafter, review the director's determination and shall allow the restrictions to be removed or so modified if it finds that the rehabilitation of the person committed will be substantially aided by such removal or modification and that proper provisions for supervision and monitoring have been instituted so as to protect the security and safety of the public. The board may require the director to furnish such information as it may find necessary for its review. The person committed shall be notified of such referral in writing by the director and shall be given an opportunity for a hearing before a panel of the board or a hearing officer appointed by the board, at which he may present evidence and cross-examine witnesses. After the board has approved the removal or modification of such restrictions, the directors shall from time to time advise the board as to the person's treatment progress, disciplinary record and performance in any program in which his participation was made possible by such removal or modification. If the board concludes on the basis of such information that reinstatement of some or all of the restrictions may be warranted, it shall schedule a hearing to be held in accordance with the provisions of this paragraph and may thereafter reinstitute the restrictions in whole or in part.

Any person committed under restrictions pursuant to the preceding paragraph, with regard to whom the director has not communicated his intention to remove or modify such restrictions, may petition the court that ordered the commitment once during the first six months following commitment and once in each subsequent six-month period for the removal or modification of such restrictions. The court shall to the extent applicable treat such petition in the same manner as a petition filed pursuant to the second paragraph of section nine, and may remove or modify the restrictions if it finds that the rehabilitation of the petitioner will be substantially aided thereby and if proper provisions for supervision and monitoring have been made.

Added by St.1976, c. 496.

§ 7. Visits by attorneys; copy of psychiatric reports

Any attorney retained by or on behalf of any person committed to the center shall be admitted to visit such person at reasonable times if in the opinion of the commissioner of mental health such visit would not be injurious to such person, or if a justice of the superior court orders in writing that such visit shall be allowed. Such attorney upon request shall be entitled to receive from the clerk of the court a copy of the report of the examining psychiatrists filed under section four.

Added by St.1958, c. 646, § 1.

§ 8. Application for admission to treatment center

Any person believing himself to be suffering from a physical or mental condition which may result in sexual trends dangerous to the welfare of the public may make application to the department of mental health upon forms prescribed by said department for admission to the treatment center, or a suitable branch thereof. All information pertaining to this application shall be confidential, and may not be used in any criminal proceeding or proceeding under this chapter against such person. Subject to such rules and regulations and conditions relative to payment therefor, as the commissioner shall prescribe, persons may be admitted to the center or a suitable branch thereof, for examination, diagnosis and treatment.

Added by St.1958, c. 646, § 1.

§ 9. Parole; periodic hearings for examination and discharge; petitions; reports; conditional release

Any person committed to the center for treatment and rehabilitation under section five or section six shall be eligible for parole. Such person shall be presented to the parole board for consideration for parole by the superintendent of the institution in which the center, or a branch thereof, is located, with the recommendations of the department of mental health, at least once during the first twelve months following commitment, provided such person is otherwise eligible for parole and at least once in every three-year period thereafter, and at any time upon the recommendation of two psychiatrists appointed by the commissioner of mental health that he is a fit person for parole. The parole board shall carefully and thoroughly consider the reports of the department of mental health concerning the progress of such person, as well as any other information it deems relevant, and may grant such person a parole permit to be at liberty upon such terms and conditions as it shall prescribe, including the condition he receive out-patient treatment, and any other condition that the commissioner of mental health may recommend. Such terms and conditions may be revised, altered, amended or revoked by the parole board at any time. The violation by the holder of a parole permit to be at liberty of any of the terms or conditions of such permit, or of any law of the commonwealth, shall render such permit void. The parole board may revoke such permit at any time. If such permit has become void or has been revoked the parole board may order the arrest of the holder of such permit by any officer qualified to serve civil or criminal process in any county, and the return of such holder to the center for further treatment under confinement. A person who has been so returned to the center shall be detained therein according to the terms of his original commitment.

Notwithstanding any provisions of this section, any person committed to the center, or a branch thereof, shall be entitled to have a hearing for examination and discharge once in every twelve months, upon the filing of a written petition by the committed person, his parents, spouse, issue, next of kin or any friend. A copy of said petition shall be sent to the district attorney for the district where the original proceedings were commenced and to the parole board within fourteen days after the filing thereof. Said petition shall be filed in a superior court for the district in which said person was committed, and the court shall set a date for a speedy hearing. The hearing shall be conducted in the same manner as is provided for in sections five and six. The court shall issue whatever process is necessary to assure the presence in court of the committed person and shall hear the recommendations of the department of mental health and the parole board regarding the disposition of the petition. The department of mental health shall make periodic examinations every year of any person committed to the center in order to determine the progress of cure, and shall give an annual report of its findings to the district attorney for the district from which the person was committed, and the parole board. The psychiatrists appointed to make examinations under this section shall have access to all records of the department of correction pertaining to the person being examined. All records concerning the progress, diagnosis and examinations made by examining psychiatrists shall be available to the parole board to assist them in their determinations of parole. Upon a finding by the court that such person is no longer a sexually dangerous person, it shall order such person to be discharged, or conditionally released from the center. He shall be released subject to such conditions, if any, as the court may impose, including any treatment or reporting to any clinic or outpatient department for physical or mental examination, and he shall be subject to being placed under the jurisdiction of a probation officer, or such other agency or authority as is deemed necessary. Any person released conditionally shall be subject to the jurisdiction of said court until discharged and such terms and conditions of release may be revised, altered, amended, revoked by the court at any time, and such discharge shall not result until after due notice to the treatment center and the district attorney in the county where the commitment first originated from and the district attorney in the county where the person resides, or will reside, at the time of the hearing and discharge.

Added by St.1958, c. 646, § 1. Amended by St.1960, c. 347; St.1966, c. 608.

§ 10. Availability of facilities to victims of sexual attacks

The commissioner of mental health may make available on a voluntary and confidential basis the facilities of the department of mental health to persons who are victims of sexual attack.

Added by St.1958, c. 646, § 1.

§ 11. Partial invalidity; effect

If any of the provisions of this chapter shall be held invalid or unconstitutional in relation to any of the applications thereof, such invalidity or unconstitutionality shall not affect other applications thereof or other provisions thereof; and to this end the provisions of this chapter are declared to be severable.

Added by St.1958, c. 646, § 1.

TITLE XVIII

PRISONS, IMPRISONMENT, PAROLES AND PARDONS

CHAPTER 125

CORRECTIONAL INSTITUTIONS OF THE COMMONWEALTH

Sec.
16. Commitment of female prisoners to Massachusetts Correctional Institute, Framingham, or other correctional facility; treatment of alcoholics.
18. Bridgewater state hospital; medical director.
19. Massachusetts Correctional Institution, Bridgewater; commitment; alcoholism.

§ 16. Commitment of female prisoners to Massachusetts Correctional Institution, Framingham, or other correctional facility; treatment of alcoholics

All females convicted of crimes in the courts of the commonwealth and sentenced to imprisonment or otherwise committed to the custody of the department shall be committed to the Massachusetts Correctional Institution, Framingham, or to such other correctional facility or facilities as the commissioner may from time to time designate as appropriate for the purpose.

The department shall maintain at the Massachusetts Correctional Institution, Framingham, a facility for the treatment and rehabilitation of alcoholics, subject to the approval of the department of public health under the provisions of chapter one hundred and eleven B.

Added by St.1955, c. 770, § 11. Amended by St.1956, c. 715, § 15; St.1970, c. 888, §§ 18, 19; St.1971, c. 1076, § 5; St.1972, c. 777, § 10.

§ 18. Bridgewater state hospital; medical director

The Bridgewater state hospital shall be part of the Massachusetts Correctional Institution, Bridgewater. The commissioner, with the approval of the commissioner of mental health, shall appoint a physician as medical director of the Bridgewater state hospital. The medical director shall have the care of the inmates thereof and govern them in accordance with rules and regulations approved by the commissioner.

Added by St.1955, c. 770, § 11.

§ 19. Massachusetts Correctional Institution, Bridgewater; commitment; alcoholism

No person shall be committed to the Massachusetts Correctional Institution, Bridgewater, for the treatment of alcoholism, except in accordance with the provisions of chapter one hundred and eleven B and chapter one hundred and twenty-three.

Added by St.1955, c. 770, § 11. Amended by St.1956, c. 715, § 16; St.1967, c. 619, § 2; St.1969, c. 889, § 22; St.1970, c. 888, § 6; St.1971, c. 760, § 18; St.1971, c. 1076, § 6.

CHAPTER 126

JAILS, HOUSES OF CORRECTION AND REFORMATION, AND COUNTY INDUSTRIAL FARMS

INSPECTION OF PRISONS

Sec.
1. County commissioners; inspection of prisons; duties.

JAILS, HOUSES OF CORRECTION AND PRISONERS

25. Care of jail or house of correction.
26. Removal of prisoners in case of disease.
27. Removal of prisoners in case of danger from fire or bombing.

INSPECTION OF PRISONS

§ 1. County commissioners; inspection of prisons; duties

The county commissioners shall be inspectors of the prisons in their counties. They shall twice in each year, at intervals of not exceeding eight months, themselves or by a committee of two of their members, visit all the prisons in their county, and fully examine into everything relative to the government, discipline and police thereof; and as soon as may be after each inspection, the committee shall make and subscribe a detailed report to the commissioners of the condition of each prison as to health, cleanliness and discipline at the time of inspection, the number of prisoners confined there within the preceding six months or since the last inspection, the causes of confinement, the number of prisoners usually confined in one room, the distinction, if any, usually observed in the treatment of the different classes of prisoners, the punishments inflicted, any evils or defects in the construction, discipline or management of such prisons, the names of prisoners who have been discharged or pardoned or who have died or escaped, and any violation or neglect of law relative to such prisons, with the causes, if known, of the violation or neglect.

JAILS, HOUSES OF CORRECTION AND PRISONERS

§ 25. Care of jail or house of correction

The keeper of each jail and the superintendent of each house of correction shall, at the county's expense, cause it to be constantly kept in as cleanly and healthful a condition as may be. No permanent vault shall be used in any apartment. Every room occupied by a prisoner shall be furnished with a suitable bucket, with a cover made to shut tight, for the necessary accommodation of such prisoner, and such bucket, when used, shall be emptied daily and shall be constantly kept in good order.

Amended by St.1979, c. 485, § 10.

§ 26. Removal of prisoners in case of disease

If disease breaks out in a jail or other county prison, which, in the opinion of the inspectors of the prison, may endanger the lives or health of the prisoners to such a degree as to render their removal necessary, the inspectors may designate in writing a suitable place within the same county, or any prison in a contiguous county, as a place of confinement for such prisoners. Such designation, having been filed with the clerk of the superior court, shall be a sufficient authority for the sheriff, jailer, superintendent or keeper to remove all prisoners in his custody to the place designated, and there to confine them until they can safely be returned to the place whence they were removed. Any place to which the prisoners are so removed shall during their imprisonment therein be deemed a prison of the county where they were originally confined, but they shall be under the care, government and direction of the officers of the county where they are confined.

Amended by St.1979, c. 485, § 11.

§ 27. Removal of prisoners in case of danger from fire or bombing

If a jail or other county prison or any building near thereto is on fire, or if a bomb threat has been received, or there is reason to believe a bomb threat or similar threat exists, and the prisoners are exposed to danger thereby, the sheriff, jailer or other person in charge of the prison may remove them to a safe place, and there confine them as long as necessary to avoid the danger, and such removal and confinement shall not be deemed an escape of the prisoners.

Amended by St.1971, c. 399.

CHAPTER 127

OFFICERS AND INMATES OF PENAL AND REFORMATORY INSTITUTIONS. PAROLES AND PARDONS

PRISONERS

Sec.
16. Physical examination of inmates; communicable diseases.
17. Specifications governing physical examinations; records; statements.
18. Penalty for failure to comply with sections 16 and 17.
19. Physical training of prisoners; director.

EDUCATION, TRAINING AND EMPLOYMENT PROGRAMS

49B. Participation of prisoners in work programs at state mental and public health facilities; restrictions.

REMOVALS

117. Medical, dental, or similar professional treatment.
117A. Temporary placement of prisoners in hospital or medical facility.
118. Pregnant females.
119. Hospital confinement as term of sentence.

PERMITS TO BE AT LIBERTY AND DISCHARGE

129A. Donation of blood; reduction of term.
142. Permits to be at liberty or discharge of pregnant females.
151. Temporary care of infirm or diseased prisoner in institution after expiration of sentence; transfer to hospital.

PRISONERS

§ 16. Physical examination of inmates; communicable diseases

The superintendents of the correctional institutions of the commonwealth, and the keepers and superintendents of jails and houses of correction shall cause a thorough physical examination to be made by a competent physician of each inmate in their respective institutions committed for a term of thirty days' imprisonment or more. In conducting the examination special attention shall be given to determining the presence of communicable diseases, particularly venereal diseases as defined under section six of chapter one hundred and eleven and pulmonary tuberculosis.

Amended by St.1933, c. 77, § 1; St.1941, c. 344, § 13; St.1948, c. 129, § 8; St.1955, c. 770, § 18; St.1957, c. 777, § 9; St.1979, c. 485, § 20.

§ 17. Specifications governing physical examinations; records; statements

Specifications governing the manner and time of such physical examinations shall be promulgated by the department of public health. Said department shall prescribe the medical records to be kept, shall require such laboratory or other diagnostic aids to be used as in its judgment are expedient, and shall forward to the commissioner statements of the results of all such examinations, together with recommendations relative thereto. For the purpose of obtaining further information relative to such prisoners the commissioner may cause inquiry to be made of court physicians and psychiatrists, probation officers and district attorneys, who have made examinations or investigations of such prisoners prior to conviction or who have prosecuted them, and such physicians, psychiatrists and probation officers shall furnish to the commissioner when requested all pertinent information in their possession. The commissioner may cause such further inquiry to be made relative to the offences committed by such prisoners and their past history and environment as he may deem necessary. He shall cause records to be made of such examinations and investigations.

Amended by St.1933, c. 77, § 2; St.1955, c. 770, § 19.

§ 18. Penalty for failure to comply with sections 16 and 17

Any officer named in section sixteen who neglects or refuses to comply with said section or who violates any rule or regulation of the department of public health made under section seventeen shall forfeit not more than fifty dollars.

Amended by St.1933, c. 77, § 3.

§ 19. Physical training of prisoners; director

The commissioner may institute a system of physical training, including military drill and organized athletic sports in any penal institution in the commonwealth, to be under the direction of the director of physical training of the department. He may prescribe the powers and duties of the director and may adopt rules and regulations to carry out this section.

EDUCATION, TRAINING AND EMPLOYMENT PROGRAMS

§ 49B. Participation of prisoners in work programs at state mental and public health facilities; restrictions

Prisoners in state correctional institutions, except prisoners who are housed in the maximum security section at the Massachusetts

Correctional Institution at Walpole, may, in the custody of an officer, be eligible to provide services for patients in residential care at facilities of the department of mental health or the department of public health or provide care of public lands or buildings and grounds. No prisoners may participate in a program under this section unless he has been screened both by the committee established under the provisions of section forty-nine A for the correctional institution wherein he is confined and by a member of the professional staff of the institution at which he is to provide such care or service, who shall be designated by the head of said institution or the person in charge of such public lands or buildings. A prisoner who escapes from the premises at which he is providing care or service under this section shall be deemed to have escaped from the institution of which he is an inmate. No prisoner, except as provided in section forty-nine, shall be employed outside the precincts of the place of his imprisonment doing work of any kind for private persons.

No person who is serving a sentence for violation of or for an attempt to commit any crime referred to in section two, three, four, five, six, seven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, twenty-four, twenty-six, twenty-eight, twenty-eight A, twenty-eight B, twenty-nine, thirty, thirty A, thirty-one, thirty-two, thirty-four, thirty-five or thirty-five A of chapter two hundred and seventy-two or section thirteen B, twenty-two, twenty-two A, twenty-three, twenty-four, twenty-four B of chapter two hundred and sixty-five or who is under commitment under the provisions of chapter one hundred and twenty-three A may participate in a program under the provisions of this section.

Added by St.1973, c. 717. Amended by St.1978, c. 79.

REMOVALS

§ 117. Medical, dental, or similar professional treatment

Whenever the physician of any state correctional facility certifies that any prisoner held therein requires medical, dental or other similar professional treatment which cannot safely or properly be given in such state correctional facility or the hospital at the Massachusetts Correctional Institution, Norfolk, the commissioner may temporarily place such person in an appropriate hospital or medical facility to receive such treatment.

Amended by St.1941, c. 510, § 1; St.1943, c. 120; St.1977, c. 582, § 1.

§ 117A. Temporary placement of prisoners in hospital or medical facility

Whenever the physician of any jail or house of correction certifies that any prisoner held therein requires medical, dental or other similar professional treatment which is not available in such jail or house of correction, the sheriff or, in the case of the house of correction in Suffolk county, the penal institutions commissioner of the city of Boston may temporarily place such prisoner in a hospital or medical facility to receive such treatment.

Added by St.1967, c. 258, § 1.

§ 118. **Pregnant females**

Whenever it appears that a female confined in any correctional facility, is about to give birth to a child, the physician of the institution where the inmate is confined shall send to the commissioner a certificate of her condition, and the commissioner shall thereupon order her removal to a hospital near the institution where she is confined, but in no case shall such female be removed to the Tewksbury hospital or to any penal or reformatory institution for the purpose of giving birth. An inmate so removed shall be kept in such hospital until the physician thereof shall certify to said commissioner that she may safely be removed, whereupon the commissioner shall issue an order for her return to the correctional facility.

Amended by St.1938, c. 456; St.1941, c. 351, § 43; St.1941, c. 510, § 2; St.1958, c. 613, § 8C; St.1977, c. 582, § 2.

§ 119. **Hospital confinement as term of sentence**

Any prisoner placed in a hospital or medical facility under section one hundred and seventeen, one hundred and seventeen A or one hundred and eighteen shall, during his absence from prison or the jail or house of correction, be considered as in the custody of the officer having charge of the prison, jail or house of correction, and the time of confinement in said hospital or medical facility shall be considered as part of the term of sentence.

Amended by St.1967, c. 258, § 2.

PERMITS TO BE AT LIBERTY AND DISCHARGE

§ 129A. **Donation of blood; reduction of term**

A prisoner of any correctional institution of the commonwealth or of any jail or house of correction whose term of imprisonment is at least thirty days and not more than three hundred and sixty-four days may have his sentence reduced by five days, and a prisoner whose term of imprisonment is three hundred and sixty-five days or more may have his sentence reduced by ten days for each pint of blood donated by him to a veterans' organization, civil defense unit, hospital or other public health institution, or to the armed forces of the United States, or the Red Cross. The blood so donated shall not be used in any way commercially or for a profit. Any reduction of sentence earned under this section shall not be subject to forfeiture.

Such reduction of sentence shall be applicable to the minimum sentence of the prisoner. Each prisoner shall be limited to one donation every eight weeks. A list of all such blood donors and the amounts of blood donated by each prisoner shall be kept by the superintendent of the correctional institution, or the keeper or superintendent of the jail or house of correction. The superintendent of a state correctional institution shall forward such list to the commissioner of corrections; the keeper of a jail or house of correction in Suffolk county shall forward such list to the penal institutions commissioner of the city of Boston; the keeper of a jail or house of correction in any other county shall forward such list to the county commissioners.

Added by St.1959, c. 224. Amended by St.1959, c. 382, § 1; St.1960, c. 794; St.1965, c. 317; St.1967, c. 221; St.1968, c. 205; St.1975, c. 765; St.1979, c. 485, § 36.

§ 142. Permits to be at liberty or discharge of pregnant females

Whenever, in the opinion of the physician of any prison or other place of confinement in which is imprisoned a woman who is about to give birth to a child during the term of her imprisonment, the best interests of the woman or of her unborn child require that she be granted a permit to be at liberty or discharged, he may so certify to the board or officer empowered to grant permits to be at liberty or discharges from the institution in which she is imprisoned, and such board or officer may, subject to such terms and conditions as appear necessary, grant the permit to be at liberty or the discharge.

§ 151. Temporary care of infirm or diseased prisoner in institution after expiration of sentence; transfer to hospital

When a prisoner at the expiration of his sentence is in such condition from bodily infirmity or disease as to render his removal from a correctional institution inexpedient, the principal officer of such institution may, with the approval of the physician, authorize his temporary care at said institution, and shall forthwith report to the commissioner all of the circumstances. If it shall appear to the commissioner that such care may be required for a period longer than sixty days, he shall ascertain whether said discharged prisoner is suffering from tuberculosis or from any other disease for which treatment facilities are available in hospitals or sanatoria under the supervision of the department of public health, and in such case he shall notify the commissioner of public health who shall, if he finds that such facilities are available, receive the discharged prisoner; and if no facilities are available in the department of public health, the commissioner of correction shall notify the commissioner of public welfare, who shall receive said discharged prisoner at the Tewksbury hospital.

Amended by St.1932, c. 180, § 25; St.1956, c. 731, § 11; St.1958, c. 613, § 8D; St.1974, c. 260, § 25.

TITLE XIX

AGRICULTURE AND CONSERVATION

CHAPTER 128

AGRICULTURE [FOOD AND AGRICULTURE]

DIVISION OF DAIRYING AND ANIMAL HUSBANDRY

Sec.
12. Powers and duties of division of dairying and animal husbandry.
13. Report of unsanitary condition.

DIRECTOR OF THE DIVISION OF PLANT PEST CONTROL

21. Inspection of nursery stock, fruits and plants at points of destination; destruction; notice to director.

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32. Duty of inspector to prepare and distribute literature on bee culture.
33. Maintenance of colony of honey bees in hives in which brood combs are fastened to container; diseased bees.
34. Instruction as to treatment of diseased and miskept colonies; destruction.
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66. Licenses to distribute; registration of specialty fertilizers; applications; labels; fees.
67. Labels; contents.
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75. Rules and regulations; effectiveness; violations; prosecution, restriction.

DIVISION OF DAIRYING AND ANIMAL HUSBANDRY

§ 12. Powers and duties of division of dairying and animal husbandry

The division of dairying and animal husbandry, under the general direction of the commissioner, shall inquire into the methods of making butter and cheese in creameries or cheese factories, investigate all dairy products and imitation dairy products bought or sold, enforce the laws for the manufacture, transfer and sale of such products, and take such action as will tend to produce a better quality thereof and to improve the dairy industry. It may co-operate with the department of public health and with inspectors of milk, but it shall not interfere with the duties of such department or officers.

§ 13. Report of unsanitary condition

The division shall report to the director of animal health each case brought to its attention where any barn, stable or other enclosure, where neat cattle, other ruminants or swine are kept, is found in an unsanitary condition.

Amended by St.1934, c. 340, § 11; St.1967, c. 347, § 7.

DIRECTOR OF THE DIVISION OF PLANT PEST CONTROL

§ 21. Inspection of nursery stock, fruits and plants at points of destination; destruction; notice to director

The director, either personally or through his assistants, may inspect at its point of destination all nursery stock coming into the commonwealth, and if such stock is found to be infested with injurious insects or plant disease he may cause it to be destroyed, treated or returned to the consignor at the consignor's expense. He may, either personally or through his assistants, inspect all fruits, plants and parts thereof brought into the commonwealth from outside thereof which also grow out of doors in this commonwealth, and, if such fruits, plants and parts thereof are found to be infested with injurious insects or plant disease likely to become established herein, he may cause the same to be destroyed, treated or returned to the consignor at the consignor's expense.

Each person, except a common carrier, who receives, brings or causes to be brought into this commonwealth any such fruits, plants and parts thereof from such states, provinces or countries as may be designated by the commissioner, shall immediately after the arrival thereof notify the director of such arrival, and hold them until they have been duly inspected.

Amended by St.1948, c. 303, § 1.

INSPECTOR OF APIARIES

§ 32. Duty of inspector to prepare and distribute literature on bee culture

With the approval of the commissioner, the inspector of apiaries shall prepare and distribute from time to time such literature upon the subject of bee culture as he deems advisable, shall make or cause to be made through his assistants such inspection of the bee colonies and beekeeping equipment throughout the commonwealth as is necessary to discover and suppress all bee diseases of a contagious or infectious nature inclusive of virus, fungus, bacterial or animal parasite. The commissioner may make and issue reasonable regulations for carrying out this and sections thirty-three to thirty-eight, inclusive.

Amended by St.1951, c. 506.

§ 33. Maintenance of colony of honey bees in hives in which brood combs are fastened to container; diseased bees

No persons shall knowingly maintain a colony or colonies of honey bees in hives, other receptacles, trees or other lodging places in which brood combs are fastened to the container of the colony or cross-built. No person shall neglect, expose, sell, barter, give or in any other way dispose of diseased bees or any colony container, comb, frame or other appliance used about the diseased bees in whole or in part in such manner as to cause the spread of the disease.

Amended by St.1951, c. 506.

§ 34. Instructions as to treatment of diseased and miskept colonies; destruction

The inspector or his assistants, upon the discovery of bee diseases or any comb cross-built or fastened to the container in any apiary or colony shall give instruction to the owner or caretaker thereof as to the treatment of the diseased and miskept colonies, infected combs and equipment and shall cause the diseased and miskept colonies and all infected combs, hives and equipment to be treated, disposed of or destroyed in such manner as to suppress the disease.

For the loss of colonies of bees and property destroyed by the inspector or his assistants the commonwealth shall pay to the owner two dollars per colony.

Amended by St.1951, c. 506.

§ 36A. Records; reports

The inspector shall keep a detailed record of the number and location of all colonies inspected by him or his assistants, the number and location of all colonies found diseased, the treatment thereof, and expenditures incurred in the performance of the duties of his office. He shall report to the commissioner annually, and at such other times as the commissioner requests.

Added by St.1967, c. 18.

§ 36B. Labeling and sale of honey; restrictions

No person shall package, label, sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded as "honey", "liquid or extracted honey", "strained honey", "imitation honey" or "pure honey" which is not pure honey made by honey bees. No person, firm, association, company or corporation, shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled as "honey" which consists of honey mixed with any other substance or ingredient. There shall be printed on the package containing such compound or mixture a statement of the ingredients of which it is made and if honey is one of such ingredients it shall be so plainly stated in the same size type as are the other ingredients; provided, however, such compound shall not be packaged, sold, exposed for sale, or offered for sale as "honey" or "imitation honey" nor shall such compound or mixture be branded or labeled with the word "honey", other than as herein provided.

Added by St.1974, c. 404.

§ 38. Penalties

Whoever violates any provision of sections thirty-three and thirty-five shall be punished for a first offence by a fine of not more than thirty dollars, for the second offence by a fine of not more than seventy-five dollars, and for a subsequent offence by a fine of not more than one hundred and fifty dollars.

Amended by St.1951, c. 506.

AGRICULTURAL AND HORTICULTURAL SOCIETIES, ETC.

§ 49. Vending of goods, provisions or refreshments near cattle show or exhibition; gaming

No person, during the time of holding a cattle show, fair or exhibition or meeting of a farmers' club and without the consent of the authorities having charge of the same, shall establish within one half mile of the place of holding such show, fair, exhibition or meeting a tent, booth or vehicle of any kind for the purpose of vending any goods, wares, merchandise, provisions or refreshments. No person shall engage in gaming or horse racing or exhibit a show or play during the regular or stated time of holding a cattle show, agricultural fair or meeting of a farmers' club, or engage in pool selling, at or within one half mile of the place of holding the same; but no person having his regular place of business within such limits shall be hereby required to suspend his business.

COMMERCIAL FEEDS

§ 54. Adulterated feed defined

A commercial feed shall be deemed to be adulterated: if (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health; (2) it bears or contains any added poisonous, added deleterious or added non-nutritive substance which is unsafe within the meaning of section four hundred and six of the Federal Food, Drug and Cosmetic Act [1], other than one which is (*i*) a pesticide chemical in or on a raw agricultural commodity; or (*ii*) a food additive; (3) it is, or it bears or contains any food additive which is unsafe within the meaning of section four hundred and nine of the Federal Food, Drug and Cosmetic Act [2]; (4) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section four hundred and eight (*a*) of the Federal Food, Drug and Cosmetic Act [3]; provided, that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section four hundred and eight of the Federal Food, Drug and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of section four hundred and eight (*a*) of the Federal Food, Drug and Cosmetic Act; (5) it bears or contains any color additive which is unsafe, within the meaning of section seven hundred and six of the Federal Food, Drug and Cosmetic Act [4]; (6) any valuable constituent has been in whole or in part omitted or abstracted therefrom or any less valuable substance substituted therefor; (7) its composition or quality falls below or differs from that which it is purported or is represented to possess by its labeling; (8) it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure the drug meets the requirements of sections fifty-two to sixty-four, inclusive, as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess. In promulgating such regulations, the commissioner or his deputy may adopt the current good manufacturing practice regulations for medicated feeds established under authority of the Federal Food, Drug and Cosmetic Act [5], unless he determines that they are not appropriate to the conditions which exist in the commonwealth; (9) it contains viable weed seed in amounts exceeding the limits which the commissioner or his deputy shall establish by rule or regulation.

Added by St.1972, c. 365, § 3.

[1] 21 U.S.C.A. § 346.
[2] 21 U.S.C.A. § 348.
[3] 21 U.S.C.A. § 346a(a).
[4] 21 U.S.C.A. § 376.
[5] 21 U.S.C.A. § 301 et seq.

§ 63. Rules and regulations

The commissioner may prescribe and enforce such rules and regulations relative to the sale of commercial feed as he deems necessary to enforce sections fifty-two to sixty-two, inclusive.

Added by St.1973, c. 43, § 8.

COMMERCIAL FERTILIZERS

§ 66. Licenses to distribute; registration of specialty fertilizers; applications; labels; fees

No person shall manufacture or distribute in the commonwealth any type of fertilizer, except specialty fertilizers, until a license to distribute has been obtained by the person whose labeling is applied to such fertilizer from the commissioner upon payment of a one hundred and twenty-five dollar license fee. All such licenses expire on the thirty-first day of December of each year. The application for license shall include the name and address of licensee, and this information shall be shown on all labels, pertinent invoices, and bulk storage for fertilizers distributed by the licensee in the commonwealth.

No person shall distribute in the commonwealth a specialty fertilizer, soil conditioner or agricultural liming material until it is registered by the manufacturer or distributor with the commissioner. An application in duplicate, listing each brand and product name of each grade of specialty fertilizer, for each soil conditioner, and for each agricultural liming material shall be made on a form furnished by the commissioner and shall be accompanied with a registration fee of twenty-five dollars. Labels for each product for which a registration application is made shall accompany the application. Upon approval of an application by the commissioner, a copy of the registration shall be furnished the applicant. All registrations expire on the thirty-first day of December each year. An application for registration of specialty fertilizers shall include: name and address of the manufacturer or distributor, the brand and product name, the grade, the guaranteed analysis, and the package sizes for persons that package specialty fertilizers only in containers of ten pounds or less.

Added by St.1973, c. 607, § 6.

§ 67. Labels; contents

All commercial fertilizers, soil conditioners, and agricultural liming materials distributed in the commonwealth in containers shall have placed thereon, or affixed to the container, a label setting forth in clearly legible and conspicuous form the information required by the preceding section. The foregoing information in written or printed form shall accompany bulk shipment deliveries and shall be supplied to the purchaser at the time of delivery.

All commercial fertilizers formulated according to specifications which are furnished by a consumer prior to mixing shall be labeled to show the guaranteed analysis, and the name and address of the distributor.

Added by St.1973, c. 607, § 6.

§ 74. False or misleading labeling; deleterious or harmful ingredients

No person shall sell, offer, or expose for sale a commercial fertilizer or brand of commercial fertilizer, soil conditioner, or agricultural liming material if its labeling is false or misleading in any particular way, or it is distributed under the name of another product, or it is not labeled as required in section sixty-six and in accordance with rules and regulations as prescribed in section seventy-five or it purports to be or is represented as a commercial fertilizer, or represented as a plant nutrient or commercial fertilizer, unless such plant nutrient or commercial fertilizer conforms to the definition of identity, if any, prescribed by regulations.

No person shall sell, offer or expose for sale a commercial fertilizer or brand of commercial fertilizer if it contains any deleterious or harmful ingredient in sufficient amount to render it injurious to beneficial plant life when applied in accordance with directions for use on the label, or if adequate warning statements or directions for use, which may be necessary to protect plant life are not shown on the label, or its composition falls below or differs from that which it is purported to possess by its labeling, or it contains unwanted crop seed or weed seed.

Added by St.1973, c. 607, § 6.

§ 75. Rules and regulations; effectiveness; violations; prosecution, restriction

The commissioner may prescribe and enforce such rules and regulations as to the sale of commercial fertilizers, soil conditioners, or agricultural liming materials as he deems necessary to enforce sections sixty-four to seventy-eight, inclusive, and may prosecute or cause to be prosecuted any person who violates any provisions of said sections; provided, however, that the effective date of regulations pertaining to "guaranteed analysis" shall be not less than six months following the issuance thereof, and that for a period of two years following the effective date of said regulations the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash; and, provided further, that after the effective date of a regulation issued under the provisions of this section, requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus and potassium shall constitute the grade. Regulations prescribed in this section shall contain the accepted definitions and official fertilizer terms issued by the Association of American Plant Food Control Officials. No complaint based upon analysis of samples shall be made if samples are taken otherwise than as provided in section seventy.

Added by St.1973, c. 607, § 6.

CHAPTER 129

LIVESTOCK DISEASE CONTROL [ANIMAL HEALTH]

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§ 1. Definitions

The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

"Agents", employees of the division of animal health in the department of food and agriculture especially designated as agents by the director.

"Contagious disease", such disease as is recognized by the United States department of agriculture, animal health division, to be contagious or infectious.

"Director", director of animal health.

"Division", the division of animal health of the department of food and agriculture.

"Domestic animals", all animals including poultry that are kept or harbored as domesticated animals. Poultry as used in this section shall include chickens, roosters, capons, hens, turkeys, pigeons, guinea fowl, and ducks and geese other than wild species.

"Inspector", inspector of animals appointed under section fifteen or sixteen.

"Pet shop", every place or premise where birds, mammals or reptiles are kept for the purpose of sale at either wholesale or retail, import, export, barter, exchange or gift.

Amended by St.1934, c. 340, § 12; St.1935, c. 70; St.1966, c. 54; St.1967, c. 347, §§ 8, 9; St.1971, c. 993, § 1; St.1975, c. 706, §§ 204, 205.

§ 2. Powers and duties of director; orders

The director may make and enforce reasonable orders, rules and regulations relative to the following: the sanitary condition of neat cattle, other ruminants and swine and of places where such animals are kept; the prevention, suppression and extirpation of contagious diseases of domestic animals; the establishing of disease-free herds of cattle and the issuing of certificates in connection therewith; the inspection, examination, quarantine, care and treatment or destruction of domestic animals affected with or which have been exposed to contagious disease, the burial or other disposal of their carcasses, and the cleansing and disinfection of places where contagion exists or has existed. No rules or regulations shall take effect until approved by the governor and council.

§ 3. Records of inspectors; forms

The director shall make and prescribe forms for records of inspectors, certificates of examination, notices and orders of quarantine, notices and orders for killing and burial, and for returns of inspectors required by this chapter.

§ 4. Certification of documents by clerk

The director may designate an employee of the division as clerk who shall keep the records of the division, shall certify copies of such records or of any order, rule or regulation issued by the director, and shall make any certificates of issuing, recording, delivering or publishing of orders required under this chapter.

§ 5. Entry of orders, rules and regulations on records; sending copies to inspectors; publication

All orders, rules and regulations made by the director shall be entered on the records of his division and a copy thereof shall be sent to each inspector in the town to which the orders, rules or regulations apply, and shall be published by such inspector in the manner prescribed by the order, rule or regulation.

§ 6. Aid to director and inspectors by sheriffs, constables and police officers

Sheriffs, constables and police officers shall upon request of the director or an inspector assist him in the performance of his duties and shall have the same powers and protection, while so engaged, as peace officers.

§ 7. Entry on premises

For the purpose of inspecting or examining animals or the places where they are kept, the director, any of his agents or an inspector, duly qualified, may enter any building or part thereof or any enclosure or other place, and may examine or inspect such animals or places. Whoever prevents, obstructs or interferes with such director, agent, inspector or other person having like authority in the performance of any of his duties, or whoever hinders, obstructs or interferes with his making such inspection or examination, or whoever secretes or removes any animal, for the purpose of preventing it from being inspected or examined, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both.

§ 8. Hospitals and quarantine stations

The director may establish hospitals or quarantine stations, with proper accommodations, wherein, under prescribed regulations, animals selected by him may be confined and treated for the purpose of determining the characteristics of a specific contagion and the methods by which it may be disseminated or destroyed, and he may direct inspectors to enforce and carry into effect all regulations made from time to time for that purpose.

§ 8A. Repealed by St.1966, c. 397

§ 9. Massachusetts Society for the Prevention of Cruelty to Animals; agents; powers and duties

The agents of the Massachusetts Society for the Prevention of Cruelty to Animals may visit all places at which neat cattle, horses, mules, sheep, swine or other animals are delivered for transportation or are slaughtered, any pet shop where animals, birds, fish or reptiles are sold, or exhibited, or for sale, and any stable where horses are kept for hire, for the purpose of preventing violations of any law and of detecting and punishing the same; with power to prosecute any such violation coming to their notice. Any person who prevents, obstructs or interferes with any such agent in the performance of such duties shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both.

Amended by St.1943, c. 332, § 10; St.1971, c. 32.

§ 10. Examination of persons under oath; mandatory attendance and testimony of witnesses; expenses; evidence

The director may examine on oath all persons who are believed to possess knowledge of material facts relative to the existence or dissemination, or danger of dissemination, of contagious diseases among domestic animals, or relative to any other matter within the provisions of this chapter, and, for the purposes of this chapter, shall have all the powers vested in justices of the peace by chapters two hundred and twenty-two and two hundred and thirty-three to take depositions, to compel witnesses to attend and testify before him and to administer oaths. Witnesses shall receive the same fees for attendance and travel as witnesses before the courts. The expense of procuring the attendance of such witnesses shall be paid by the commonwealth. Copies of the records of the division, or of any order, rule or regulation issued by the director, if duly certified by the clerk, and any certificate by the clerk of the issuing, recording, delivering or publishing of such orders, rules or regulations under this chapter, shall be competent evidence of such fact in any tribunal.

Amended by St.1934, c. 340, § 13.

§ 11. Isolation or destruction of diseased animals; order; expense; post mortem examination

If the director, or one of his agents, by examination of a case of contagious disease of domestic animals, except foot and mouth disease, is of opinion that the public good so requires, he shall cause the diseased animal to be securely isolated or to be killed without appraisal or payment. An order for killing shall be issued in writing by the director, may be directed to an inspector or other person, and shall contain such direction as to the examination and disposal of the carcass and the cleansing and disinfection of the premises where such animal was condemned as the director considers expedient. A reasonable amount may be paid from the treasury of the commonwealth for the expense of such killing and burial. If thereafter it appears, upon post mortem examination or otherwise, that such animal was free from the disease for which it was condemned, an appraisal of such animal shall be made and the amount of appraisal value therefor shall be paid to the owner by the commonwealth, except as otherwise provided in section fourteen relative to foot and mouth disease.

§ 12. Repealed by St.1922, c. 353, § 4

§ 12A. Repealed by St.1966, c. 398

§ 13. Repealed by St.1966, c. 399

§ 13A. Destruction of animals affected with scrapie; partial compensation

All sheep and other domestic animals which are affected with, or have been exposed to, scrapie shall be destroyed when, in the opinion of the director, the public good so requires, and their carcasses shall be buried or otherwise disposed of. An order for killing and for the disposal of carcasses shall be issued in writing by said director, and may be directed to an agent, inspector or other person. The director may appoint persons to make appraisals on live stock, the destruction of which is ordered under this section, and fifty per cent of the full value of such live stock, as determined by the appraisal, may be paid from the annual appropriation for the extermination of contagious diseases among domestic animals. If the federal government appropriates monies for payment of a certain portion of the value of any animals destroyed under this section, the amount of payment by the commonwealth for such animals shall be limited to the difference between such federal payment plus the net salvage received by the owner, and the full value as herein determined, which amount shall not exceed fifty per cent of such value.

Added by St.1974, c. 743.

§ 14. Destruction of cattle or animals affected with foot and mouth disease; order; disinfection or destruction of buildings; appraisals of live stock destroyed; payment

All neat cattle and other domestic animals, which are affected with, or have been exposed to, foot and mouth disease, shall be destroyed when, in the opinion of the director, the public good so requires, and their carcasses shall be buried or otherwise disposed of. An order for killing and for the disposal of carcasses shall be issued in writing by said director, and may be directed to an agent, an inspector, or other person. The said director shall also issue such directions for the cleansing and disinfection of buildings, premises and places in which foot and mouth disease exists or has existed, and of property which may be on or contained therein, as in his opinion may be necessary or expedient. Any property on such premises which may be, in the opinion of the director or of his agents, a source of contagion may be destroyed by order of the director. The necessary expenses incurred in carrying out this section may be paid from the annual appropriation for the extermination of contagious diseases among domestic animals. The director may appoint persons to make appraisals on live stock and other property the destruction of which is ordered under this section, and fifty per cent of the full value of such live stock and other property, as determined by the appraisal, may be paid from the annual appropriation aforesaid. If the United States government makes an appropriation for payment of a certain portion of the value of any animals and property destroyed under this section, the payment by the commonwealth for such animals or property shall be limited to the difference between such portion and the full value thereof determined as herein provided, which shall not be in excess of fifty per cent of such value.

§ 14A. Quarantine or destruction of animals affected with vesicular stomatitis or vesicular exanthema; importations into commonwealth; cleansing and disinfection of buildings

All domestic animals which are affected with vesicular stomatitis, or vesicular exanthema, as determined by the director, shall be quarantined.

Animals which are affected with vesicular exanthema, as determined by the director, shall be slaughtered at a slaughtering establishment under federal supervision and the products of such animals shall be processed. Animals affected with vesicular stomatitis shall be disposed of as the director directs.

All such animals, either too small, or too young, to be of value commercially as meat, shall be disposed of as the director directs. The director shall make such rules and regulations in respect to the importation into the commonwealth of such animals or products therefrom as he may deem necessary.

The director shall also issue such directions for the cleansing and disinfection of buildings, premises and places in which vesicular stomatitis or vesicular exanthema exists, or has existed, and of property which may be on or contained therein, as in his opinion may be necessary or expedient, and no such buildings, premises, places and property shall be again used for the raising, care or maintenance of such animals until so authorized by the director in writing. No rules or regulations shall take effect until approved by the governor and council.

Added by St.1953, c. 19, § 1. Amended by St.1953, c. 655, § 2.

§ 14B. Feeding garbage to swine; definitions; permit; application; revocation; processing of garbage; inspection of premises; entry; records

The word "garbage" means any meat waste, or meat waste combined with any other food waste, resulting from handling, preparation, cooking and consumption of foods, including animal carcasses or parts thereof.

The word "person" means the state, any municipality, political subdivision, institution, public or private corporation, individual, partnership, or other entity, except that it shall not mean a person who feeds garbage to swine which are raised for such person's own use.

No person shall feed garbage to swine without first securing a permit therefor from the director. Such permits shall be secured before January first, nineteen hundred and fifty-four, and shall be renewed on the first day of January of each year thereafter.

Any person desiring to obtain a permit to feed garbage to swine shall make written application therefor to the director in accordance with the requirements of the division of animal health. At the time of filing such application the applicant shall pay to the division of animal health a permit fee in the sum of five dollars.

Upon determination that any person having a permit issued under this section, or who has applied for a permit hereunder, has violated or failed to comply with any of the provisions of this section, or any of the rules and regulations promulgated thereunder, the director, subject to the approval of the commissioner of agriculture, may revoke such permit or refuse to issue a permit to an applicant therefor.

On and after January first, nineteen hundred and fifty-four, all garbage, regardless of previous processing, shall, before being fed to swine, be thoroughly heated to at least 212° F for at least thirty minutes, unless treated in some other manner which shall be approved in writing by the director as being equally effective.

The director shall cause the premises of all permit holders to be inspected semi-monthly for the purpose of carrying out the provisions of this and the preceding sections.

Any authorized representative of the division of animal health shall have the power to enter at reasonable times upon any private or public property for the purposes of inspection and investigating conditions relating to the treating of garbage to be fed to swine as required by this section.

Any authorized representative of the division of animal health may examine any records or memoranda pertaining to the feeding of garbage to swine. The division of animal health may require maintenance of records relating to the operation of equipment for and procedure of treating garbage to be fed to swine. Copies of such records shall be submitted to the division of animal health on request.

Added by St.1953, c. 655, § 2. Amended by St.1967, c. 347, §§ 10, 11.

§ 14C. Hog cholera; slaughtering of hogs; payment to owners

All hogs which are affected with, or have been exposed to, hog cholera, shall be quarantined and appraised by an appraiser of the division of animal health in the department of food and agriculture, hereinafter called the division, or an appraiser appointed by the United States Department of Agriculture, animal health division. Any such hogs as the director of the division may determine shall be slaughtered and their carcasses shall be disposed of in such manner as said director may determine. The commonwealth shall pay to the owner of such hogs so slaughtered one half of their value as determined by said appraisal, but not to exceed fifty dollars for a purebred and forty dollars for a grade, said payment to be made from the amounts appropriated therefor; provided, however, that if the federal government undertakes to pay part of the cost of any hogs destroyed, as provided in this section, the payment by the commonwealth shall be limited to the difference between the payment authorized by the federal government and the payment hereinbefore provided. No payment shall be made as herein provided unless the director has determined that the owner or his representative has not, in the opinion of the director, by wilful act or neglect, contributed to the spread of hog cholera. All determinations of value made under this act shall be at fair market value.

Added by St.1968, c. 510. Amended by St.1973, c. 882; St.1975, c. 706, § 206; St.1977, c. 363A, § 71.

§ 14D. Hogs affected with brucellosis; quarantine and testing; importation, inspection; slaughtering, payment to owners

All hogs which are affected with, or have been exposed to brucellosis shall be quarantined and tested by the director or his agent, or by an agent of the animal health division of the United States department of agriculture. The director may, in his discretion, slaughter any such hogs and their carcasses shall be disposed of in such manner as he may determine. No person shall transport hogs into the commonwealth until said hogs have been inspected and passed as healthy. Said inspection shall include certification of a negative brucellosis test within thirty days of importation into the commonwealth and a certificate of health by a veterinarian inspector of the animal health division of the United States department of agriculture or a veterinarian of the state of origin, authorized by said state and approved by said animal health division.

Added by St.1974, c. 592, § 1.

§ 15. Inspector of animals; appointment

The city manager in cities having a plan D or plan E charter, the mayor in all other cities, except Boston, the town manager in towns having a town manager form of government and the selectmen in all other towns shall annually, in March, nominate one or more inspectors of animals, and before April first shall send to the director the name, address and occupation of each nominee. Such nominee shall not be appointed until approved by the director.

In a town which has a board of health and accepts this paragraph, the nomination of such inspectors shall be made by the board of health and not by the selectmen or town manager.

Amended by St.1941, c. 162; St.1962, c. 255; St.1963, c. 579, § 1; St.1969, c. 159.

§ 16. Refusal or neglect of town to appoint inspector; appointment by director

A town shall, for each refusal or neglect of its officers to comply with the requirements of the preceding section, forfeit not more than five hundred dollars. The director may appoint one or more inspectors for such town, and may remove an inspector who refuses or neglects to be sworn or who, in the opinion of the director, does not properly perform the duties of his office and may appoint another inspector for the residue of his term.

§ 17. Oath of inspectors; compensation; reimbursement of towns

Each inspector shall be sworn to the faithful performance of his official duties, and shall receive from the town for which he is appointed reasonable compensation, if appointed by the town, or such compensation as shall be fixed by the director, but not in excess of five hundred dollars a year, if appointed by the director. Towns having a valuation of less than two and one half million dollars shall be reimbursed by the commonwealth, upon certificate of the selectmen, approved by the director, for one half of such compensation, not exceeding two hundred and fifty dollars for each inspector in any one year.

§ 18. Duties of inspectors

Each inspector shall comply with and enforce all orders and regulations directed to him by the director. If he refuses or neglects so to do, he shall be punished by a fine of not more than five hundred dollars.

§ 19. Inspections of domestic animals

Inspectors shall make regular and thorough inspections of all neat cattle, sheep and swine found within the limits of their respective towns. Such inspections shall be made at such times and in such manner as the director shall from time to time order. They shall also from time to time make inspections of all other domestic animals within the limits of their respective towns if they know, or have reason to suspect, that such animals are affected with or have been exposed to any contagious disease, and they shall immediately inspect all domestic animals and any place where any such animals are kept whenever directed so to do by the director; but this section shall not apply to the inspection of sheep or swine slaughtered in wholesale slaughtering establishments, or to the obtaining of a license for the slaughtering of such sheep or swine.

§ 20. Certificate of healthy condition

An inspector who is satisfied, upon an examination of any neat cattle, sheep or swine, that they are free from contagious disease, shall deliver to the owner or to the person in charge thereof a written certificate of their condition, in such form as the director shall prescribe, signed by the inspector, and shall enter a copy of said certificate upon his records.

§ 21. Quarantine of diseased animals; notice or order; records

An inspector who, upon an examination of a domestic animal, suspects, or has reason to believe, that it is affected with a contagious disease shall immediately cause it to be quarantined or isolated for at least ten days upon the premises of the owner or of the person in whose charge it is found, or in such other place as he may designate, and shall take such other sanitary measures to prevent the spread of such disease as may be necessary or as shall be prescribed by any order or regulation of the director. He shall also deliver to the owner or person in charge of such animal, or to any person having an interest therein, a written notice or order of quarantine signed by him, in such form as the director shall prescribe, and shall enter a copy of said notice upon his records.

Amended by St.1963, c. 29.

§ 22. Service of notice or order of quarantine; return; evidence

Such notice or order may be served by an inspector or officer qualified to serve civil process, by delivery in hand to, or leaving at the last and usual place of abode of, the owner or person having an interest in or in charge of the animal concerned, or by posting upon the premises where said animal is quarantined or isolated. A copy thereof, with the return of said officer or inspector thereon that such service has been made, shall be competent evidence in any court that such quarantine has been imposed. If an animal has been so quarantined, it shall remain in quarantine until the further order of the director.

§ 22A. Dogs owned by police departments or agencies

The provisions of sections twenty-one and twenty-two shall not apply to dogs owned by police departments or police agencies of the commonwealth or any of its political subdivisions when such dogs are under the direct supervision, care and control of a police officer, have been vaccinated as provided in section one hundred and forty-five B of chapter one hundred and forty, and are subject to routine veterinary care.

Added by St.1977, c. 385.

§ 23. Examination of buildings; report

Inspectors shall, in addition to their inspections of animals for contagious diseases, examine the places in which neat cattle are kept, with reference to their situation, cleanliness, light, ventilation and water supply, and the general condition and cleanliness of the said neat cattle, and shall make a detailed report, with names and residences of owners, to the director.

§ 24. Notice of quarantine

An inspector who has caused a domestic animal to be quarantined, as provided in section twenty-one, shall immediately give a written notice thereof, with a copy of the order of quarantine, to the director, and shall give such information to no other person.

§ 25. Records of inspectors of animals; returns

Each inspector shall keep a record of all inspections made by him and of his doings therein, and shall make regular returns thereof to the division, but such returns need not be retained for more than two years, and may then be destroyed or disposed of by their lawful custodian, and any proceeds received in the course of their disposal shall be paid to the commonwealth. The director shall prescribe the form in which and the times at which such records and returns shall be made, and may at any time inspect them and make copies thereof.

§ 26. Application of chapter to inspectors in Boston

The provisions of this chapter relative to the duties of inspectors shall apply to persons officially performing the functions of inspectors in Boston.

§ 26A. Shipping cattle into commonwealth without inspection; certificate of health

Whoever ships, drives or transports into the commonwealth cattle to be used for dairy purposes, unless they have been inspected or passed as healthy by a veterinary inspector of the United States department of agriculture, animal health division, or a veterinarian of the state of origin authorized by the state and approved by said animal health division and are accompanied by a certificate of health approved by the proper livestock officials of the state of origin stating that each such animal six months of age or over was negative to an agglutination blood test for Bangs' abortion disease applied in accordance with rules and regulations made by the director and approved by the governor, shall be punished by a fine of not more than two hundred dollars.

Amended by St.1938, c. 168; St.1941, c. 173; St.1966, c. 55.

§ 26B. Hatching eggs; baby chicks or live poultry; restriction on sale, transportation or importation

No person shall buy, sell or transport within or import into the commonwealth hatching eggs, baby chicks or live poultry, except poultry intended for immediate slaughter or for exhibition subject to permit granted by the state department of agriculture, unless such hatching eggs are the produce of flocks which meet, and such baby chicks or live poultry meet or are the first generation progeny of flocks which meet, the minimum requirements for "pullorum passed" or "pullorum clean" grades of poultry, as established by the commissioner of agriculture, or the equivalent thereof. Whoever, himself or by his servant or agent, violates any provision of this section shall be punished for the first offence by a fine of not more than one hundred dollars, and for a subsequent offence by a fine of not less than fifty nor more than two hundred dollars.

Added by St.1957, c. 337.

§ 27. Seizure, quarantine and destruction of imported diseased animals

Animals brought into this commonwealth from places which in the opinion of the director are infected, may be seized and quarantined by the director at the expense of their owners or consignees, so long as the public safety requires; and, if in his opinion safety so requires, he may cause such animals to be killed without appraisal or payment.

§ 28. Notice of contagious disease to director

The board of health of a town, any member or agent thereof or any other person who has knowledge of or reason to suspect the existence of any contagious disease among any domestic animals in the commonwealth, or that any domestic animal is affected with a contagious disease, whether such knowledge is obtained by personal examination or otherwise, shall immediately give written notice thereof to the director, or to an inspector for the town where the animal is kept. Whoever fails to give such notice shall be punished by a fine of not more than one hundred dollars. Upon the receipt of such notice by said inspector, he shall proceed as provided in sections twenty-one, twenty-two, twenty-four and twenty-nine. Upon receipt of such notice by the director he shall inspect or cause his agent to inspect such animal, and thereafter shall proceed as provided in section eleven or fourteen, as the case may be.

§ 29. Expense of quarantine

If animals have been quarantined, collected or isolated upon the premises of the owner or of the person in possession of them at the time such quarantine is imposed, the expense thereof shall be paid by such owner or person; but if specific animals have been quarantined or isolated under section eight or twenty-one for more than ten days upon such premises, as suspected of being affected with a contagious disease, and the owner is forbidden to sell any of the product thereof for food, or if animals have been quarantined, collected or isolated on any premises other than those of such owner or person in possession thereof, the expense of such quarantine shall be paid by the commonwealth, except that, in the case of any animal quarantined for biting or scratching a person, the expense of such quarantine shall be paid by the county in which the injury was inflicted.

Amended by St.1938, c. 308.

§ 30. Effect of quarantine; release; violation of quarantine; penalty

An animal which has been quarantined or isolated by order of the director or of his agent, or of an inspector, shall, during the continuance of such quarantine or isolation, be deemed to be affected with a contagious disease. Whenever an animal has been released from quarantine by order of the director the same animal shall not again be quarantined or isolated by an inspector during the period of thirty days immediately following such release except upon order of the director. Whoever knowingly breaks or authorizes or causes to be broken a quarantine so imposed, or whoever, contrary to such order of quarantine or isolation, knowingly removes an animal or authorizes or causes it to be removed from a building, place or enclosure where it is quarantined or isolated, or whoever, contrary to an order or notice of quarantine, knowingly places or causes or authorizes to be placed any other animals within a building, place or enclosure where an animal is quarantined, or in contact therewith, or whoever knowingly conceals, sells, removes or transports, or knowingly causes or authorizes to be concealed, sold, removed or transported, an animal, knowing or having reasonable cause to believe that it is affected with a contagious disease, or whoever knowingly authorizes or permits such animal to go at large upon any public way within the commonwealth, or whoever knowingly brings or authorizes or permits to be brought from another country, state, district or territory into this commonwealth, an animal which is affected with or has been exposed to a contagious disease, or whoever disobeys a lawful order or regulation of the director or of any of his agents or of inspectors in the performance of their duty under this chapter, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

§ 31. Damages; arbitration; petition for assessment of damages

If an owner is entitled to compensation for the killing of an animal or the destruction of other property under this chapter, and cannot agree with the director as to its value, the director and the owner may each select an arbitrator, and if the owner neglects or refuses to select an arbitrator within twenty-four hours after notice that the director has selected one, the arbitrator selected by the director may select another. In each case if the two arbitrators cannot agree as to the value, they may select a third. The arbitrators shall be sworn to the faithful performance of their duties and shall determine the value within the limits provided by sections eleven to fourteen, inclusive, and the amount so fixed shall be paid to the owner.

If the owner's right to compensation is in dispute, if either party prefers to submit the amount of damages to judicial determination, or if the award of the arbitrators is unsatisfactory to either party, the owner or the director may, within thirty days after the killing of such animal or the destruction of such property, or, if arbitrators have been appointed, within thirty days after the date of their award, file a petition for the assessment of damages in the superior court for Suffolk county or for the county where the killing or destruction occurred. A copy of the petition shall be served upon the adverse party. If upon such petition it appears that the owner is entitled by law to compensation, the damages shall be assessed under chapter seventy-nine within the limits provided by sections eleven to fourteen, inclusive, of this chapter. The damages, costs and expenses incurred by the director in prosecuting or defending the petition shall be paid by the commonwealth.

§ 31A. Shipping or delivering tuberculin within commonwealth; statement as to use; application to common carriers

Every person who, himself or by his servant or agent, ships from a place within the commonwealth or otherwise delivers any tuberculin to a person within the commonwealth shall forthwith file with the director a written statement containing the name and address of the person to whom the same was shipped or delivered as aforesaid and the quantity thereof. Every person receiving tuberculin for use in connection with domestic animals shall forthwith after such use file with the director a written statement containing the name and address of the person whose cattle have been tested with such tuberculin and of the person from whom the same was received, together with records of said test upon blanks furnished by the director. Whoever violates any provision of this section shall be punished for the first offence by a fine of not less than twenty-five nor more than one hundred dollars and for a subsequent offence by a fine of not less than fifty nor more than five hundred dollars. This section shall not apply to common carriers, their servants or agents.

§ 32. Use of tuberculin as diagnostic agent; tests

Tuberculin as a diagnostic agent for the detection of tuberculosis in domestic animals shall be used only upon cattle brought into the commonwealth and upon cattle in quarantine stations; but it may be used as such diagnostic agent on any animal in any other part of the commonwealth, with the written consent of the owner or person in possession thereof, and upon animals which have been reported as tuberculous upon physical examination by a competent veterinary surgeon, and also as provided in section thirty-three B. Such tests by the use of tuberculin shall be made without charge to citizens of the commonwealth, and in all other cases the expense of such tests shall be paid by the owner of such animals or by the person in possession thereof.

Amended by St.1939, c. 451, § 54; St.1966, c. 52.

§ 33. Compensation for animals reacting to tuberculin test; rules and regulations; appraisals; award

Except as otherwise provided, a person who has animals tested with tuberculin shall not be entitled to compensation from the commonwealth for any animals which react to the tuberculin test unless they have been tested by the director or qualified veterinarians acting under his authorization and have been owned and kept by the owner applying for the test on the premises where tested for a period of not less than sixty days next prior to the date of said test or have been admitted to the herd on a test approved by the director. The director may prescribe rules and regulations for the inspection of cattle by the application of the tuberculin test and for the segregation, sale or slaughter of reacting animals; but no inspection by the application of such test shall be made unless an agreement has previously been entered into for such inspection and application with the owner of the animals, except as provided in section thirty-three B. If, in the opinion of the director, any of the animals react to the test and are slaughtered in consequence thereof, the owner shall be reimbursed by the commonwealth in the manner hereinafter provided. The director may appoint persons to make appraisals of reacting cattle in conjunction with the owner or his authorized representative. Such appraisal shall be subject to the rights of arbitration and petition set forth in section thirty-one; provided, that the award or damages shall be within the limits prescribed by this section. The commonwealth shall, within thirty days after the filing in the office of the director of a valid claim for reimbursement in pursuance of such an appraisal or of an award under section thirty-one, pay to the owner of any animal slaughtered under authority of any rules or regulations made hereunder, or to any mortgagee or assignee designated in writing by said owner, two thirds of the difference between the amount received by the owner for the carcass of the animal and the value of the animal as determined by appraisal as aforesaid; provided, that payment by the commonwealth hereunder shall not exceed two hundred dollars for any grade animal or two hundred and fifty dollars for any pure-bred animal; and provided, further, that no payment shall be made for any animal if, since the previous test, the owner or his representative has violated the rules and regulations made hereunder; and provided, further, that the owner or his representative has not unlawfully or improperly obtained or attempted to obtain reimbursement for any animal; and provided, further, that the owner or his representative has not, in the opinion of the director, by wilful act or neglect, contributed to the spread of bovine tuberculosis. If the federal government undertakes to pay part of the cost of any animal destroyed, as provided in this section, the payment by the commonwealth shall be limited to the difference between the payment authorized by the federal government and the payment hereinbefore provided.

Amended by St.1934, c. 272; St.1946, c. 417; St.1952, c. 519; St.1973, c. 881.

§ 33A. Identification of reacting bovine animals; removal of tag; disposition of tagged animals

Any bovine animal which reacts to a tuberculin test shall immediately be tagged for identification by the veterinarian, who has applied such test, by inserting into the external ear of the reacting animal a special metal tag provided by the director. Any person who removes any such tag attached as above provided, or who in any way disposes of any animal which has reacted to a tuberculin test except for the purpose of immediate slaughter, or who neglects or refuses to have slaughtered a reacting animal sold to him for that purpose, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than thirty days.

§ 33B. Declaration of quarantine areas; tuberculin tests of bovine animals; modified accredited areas; violation of terms of quarantine

The director may, upon application to him by not less than seventy-five per cent of the cattle owners owning cattle permanently kept in any city or town, or upon like application by the owners of eighty-five per cent of such cattle, declare said city or town a quarantine area and may proceed to test by the tuberculin test or otherwise all bovine animals within said area. Whenever not less than eighty-five per cent of the cattle permanently kept in the commonwealth are being tested for bovine tuberculosis under the supervision of the director or of the appropriate federal officials, the director may declare the entire commonwealth to be a quarantine area and may proceed to test by the tuberculin test or otherwise all bovine animals within the commonwealth. If the director finds and declares that such a city or town or the commonwealth, as the case may be, is substantially free from bovine tuberculosis, he may proclaim it to constitute a modified accredited area and may prescribe rules and regulations, subject to the approval of the governor and council, prohibiting the shipment or transportation into the same of any bovine animals without a permit and health certificate issued by the director or some officer designated by the director for the purpose. Whoever violates the terms and conditions of any such quarantine or any such rule or regulation shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

Amended by St.1934, c. 96; St.1954, c. 647, § 1; St.1956, c. 527, § 1.

§ 33C. Declaration of quarantine area; tests for brucellosis of bovine animals; modified certified brucellosis free area; violation of terms of quarantine

The director may upon application to him by not less than seventy-five per cent of the cattle owners owning cattle permanently kept in any city, town or county, or upon like application by the owners of eighty-five per cent of such cattle, declare said city, town or county a quarantined area, and may proceed to test for brucellosis by an approved method for the detection of brucellosis all bovine animals within said area. If the director finds and declares said city, town or county is substantially free from bovine brucellosis, he may proclaim it to constitute a modified certified brucellosis free area and may prescribe rules and regulations, subject to their approval by the governor and council, prohibiting the shipment or transportation into said area of any bovine animal without a permit and health chart issued by the director or some person designated by the director for this purpose. Whoever violates the terms and conditions of any such quarantine or any such rule or regulation shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

Added by St.1956, c. 527, § 1.

§ 33D. Tests for detection of brucellosis; applications; identification of animals; destruction; disposition where test doubtful

Prior to the first day of January, nineteen hundred and fifty-eight, the director may, upon written application of the owner, test cattle and thereafter shall test all cattle by an approved method for the detection of brucellosis. Said director shall provide for the drawing and collecting of the blood samples and for the laboratory testing. He shall cause any such animal reacting positively to any test for brucellosis to be identified by the branding of the letter B, which shall be at least two inches by two inches, on the left jaw, and the insertion of a reactor tag in the left ear, and to be quarantined. Prior to the first day of January, nineteen hundred and sixty, such reactors may be kept on the farm where tested under quarantine and moved only by permit. All such reactors when removed from the farm shall be disposed of for immediate slaughter under official supervision. If the reaction of any animal to a test for brucellosis is doubtful it shall be identified and quarantined, and shall not be disposed of without written permission of the director. The commonwealth shall not be liable for any damage incurred by any such test.

Added by St.1956, c. 527, § 1.

§ 34. Compensation to violators of regulations

No compensation shall be allowed by the commonwealth to an owner of condemned cattle who has failed to comply with the reasonable regulations of the director relative to cleanliness, ventilation, light, disinfection and water supply. An owner of cattle who refuses to comply with any such regulation shall be punished by a fine of not more than fifty dollars.

§ 35. Driving certain cattle on public ways or roads

Texan, Mexican, Cherokee, Indian or other cattle, which the director has reason to believe may spread contagious disease, shall not be driven on any public way or road, or outside the stockyards connected with any railroad in the commonwealth, contrary to an order of the director, and they shall be kept in different pens from those in which other cattle are kept in all stockyards in the commonwealth. Whoever violates any provision of this section shall be punished by a fine of not less than twenty nor more than one hundred dollars.

§ 36. Notice of contagious diseases

Whoever kills an animal or causes it to be killed, with the consent of the owner or person in possession thereof, upon suspicion that it is affected with or has been exposed to a contagious disease, and who, upon the inspection of the carcass thereof, finds or is of opinion that it is affected with a contagious disease, shall forthwith notify such owner or person in possession thereof, and the director or an inspector for the town where such animal was kept, of the existence of such disease, and of the place where the animal was found, the name of the owner or person in possession thereof and of the disposal made of such carcass. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months, or both.

§ 36A. Repealed by St.1941, c. 607, § 2

§ 36B. Vaccination of female calves; refusal to have calves vaccinated; report of veterinarian; identification of positive reactors; transportation of unvaccinated bovine animals

The director shall cause all female calves, to be used for breeding, to be vaccinated against brucellosis when they are from the ages of two to six months, inclusive. Calves shall be vaccinated by an approved licensed veterinarian designated by the director and only with vaccine produced at establishments licensed under the federal Virus-Serum-Toxin Act,[1] or at establishments in the commonwealth approved by the director, and the expense thereof shall be borne by the commonwealth. The director shall make the necessary rules for the handling of the vaccine and the method of vaccination. Any person refusing to have his calves vaccinated shall not be permitted to move any of his cattle from his premises except for immediate slaughter, unless such cattle react negatively to an approved blood test for brucellosis. Each veterinarian shall make a report of all animals vaccinated by him on forms furnished by the director. The commonwealth shall not be liable for any damages incurred or alleged to have been incurred by the use of vaccine. Whenever any cattle are tested for brucellosis and determined to react positively to such tests, or are vaccinated against brucellosis, the owner of the cattle shall cause them to be permanently identified in accordance with regulations prescribed by the director. It shall be unlawful for a person to transport or offer for transport any unvaccinated bovine animal over six months of age, and any vaccinated bovine animal over eighteen months of age that has been tested for brucellosis and has reacted positive to such tests, except cattle moved under permit issued by the director to slaughtering establishments under state or federal inspection. Any person, firm or corporation who buys, sells or transports any cattle known to be positive to an approved test for brucellosis, except animals under eighteen months of age and accompanied by a certificate of vaccination or except unvaccinated animals less than six months of age or except animals for immediate slaughter, shall be fined not more than two hundred dollars for each animal bought, sold or transported.

Added by St.1938, c. 314. Amended by St.1943, c. 56; St.1952, c. 518; St.1954, c. 647, § 2; St.1956, c. 527, § 2; St.1965, c. 72, § 1; St.1966, c. 91, § 1; St.1978, c. 485, § 1.

[1] See 21 U.S.C.A. § 151 et seq.

§ 36C. Repealed by St.1941, c. 607, § 2

§ 36D. Importation of vaccinated animals; conditions

Vaccinated animals which are over eighteen months of age may be imported into the commonwealth if within thirty days prior to entry they have reacted negatively to an approved blood test conducted in a laboratory approved by the state of origin. Vaccinated animals eighteen months of age and under may be imported into the commonwealth without such blood test if accompanied by a certificate stating the animals have been vaccinated between the ages of two to six months, inclusive, by a veterinarian duly licensed by the state of origin.

Added by St.1954, c. 647, § 3. Amended by St.1956, c. 527, § 3; St.1960, c. 371; St.1965, c. 72, § 2; St.1966, c. 91, § 2; St.1978, c. 485, § 2.

§ 36E. Importation of unvaccinated female cattle over six months of age; certificate

Text of section effective until July 1, 1980

No person shall import into the commonwealth cattle over six months of age without an official certificate of vaccination stating such female cattle have been officially vaccinated for brucellosis from the ages of four through eight months of age.

Added by St.1954, c. 647, § 3. Amended by St.1956, c. 527, § 3.

For text of section effective July 1, 1980, see § 36E, post

§ 36E. Importation of unvaccinated female cattle over five months of age; certificate

Text of section effective July 1, 1980

No person shall import into the commonwealth, for breeding purposes, female cattle over five months of age without an official certificate of vaccination stating such female cattle have been vaccinated for brucellosis from the ages of two to six months, inclusive.

Added by St.1954, c. 647, § 3. Amended by St.1956, c. 527, § 3; St.1978, c. 485, § 2.

For text of section effective until July 1, 1980, see § 36E, ante

§ 36F. Brucellosis, imported cattle, blood testing

The director, his authorized agent or a duly licensed veterinarian designated by the director may conduct such blood tests for brucellosis of all cattle imported into the commonwealth which are over five months of age, as will aid in the effective control of brucellosis.

Added by St.1956, c. 527, § 4. Amended by St.1958, c. 449; St.1965, c. 72, § 3; St.1966, c. 91, § 3; St.1978, c. 485, § 2.

§ 36G. Reimbursement of owners for slaughter of animals reacting positively to blood test for brucellosis; appraisal; award

If any animal tested by an approved licensed veterinarian designated by the director under this section reacts positively to an approved blood test for brucellosis and is slaughtered in consequence thereof, or if any animal does not react positively but has been exposed to brucellosis in an infected herd, said animal may be slaughtered because of such exposure to the positive reactors in accordance with the recommended uniform methods and rules published by the veterinary services of the animal and plant health inspection service of the United States Department of Agriculture. The director may appoint persons to make appraisals of reacting cattle in conjunction with the owner or his authorized representative. Such appraisal shall be subject to the rights of arbitration and petition set forth in section thirty-one; provided, that the award or damage shall be within the limits prescribed by this section. The commonwealth, shall within thirty days after the filing in the office of the director of a valid claim for reimbursement in pursuance of such an appraisal or award under said section thirty-one, pay to the owner of any animal slaughtered under authority of any rules and regulations made hereunder, or to any mortgagee or assignee designated in writing by said owner, two thirds of any difference between the amount received by the owner for the carcass of the animal and the value of the animal as determined by appraisal as aforesaid; provided, that payment by the commonwealth hereunder shall not exceed one hundred and fifty dollars for any grade animal or two hundred dollars for any purebred animal; and provided, further, that no payment shall be made for any such animal unless it was kept by the owner applying for the test on the premises where tested for at least sixty days next prior to the date of said test, or unless it was admitted to the herd on a test approved by the director and provided, further, that no payment shall be made for any animal if, since a previous test, the owner or his representative has violated the rules and regulations made hereunder; and provided, further, that the owner or his representative has not unlawfully or improperly obtained or attempted to obtain reimbursement for any animal; and provided, further, that the owner or his representative has not, in the opinion of the director, by wilful act or neglect, contributed to the spread of bovine brucellosis. If the federal government pays part of the value of any animal slaughtered under this section, the payment by the commonwealth shall be limited to the difference between the payment authorized by the federal government and the payment as hereinbefore provided.

Added by St.1956, c. 527, § 4. Amended by St.1977, c. 793, § 1.

§ 36H. Waiver of compliance with §§ 36B, 36D to 36F

The director may after a hearing grant, in suitable cases, waivers of compliance with the provisions of sections thirty-six B, thirty-six D, thirty-six E and thirty-six F.

Added by St.1966, c. 94.

§ 37. Jurisdiction of superior court

The superior court shall have jurisdiction in equity to enforce this chapter and restrain violations thereof.

§ 38. Annual report

The commissioner of food and agriculture shall make an annual report of the acts of the director, including therein the information obtained from inspectors under section twenty-three.

Amended by St.1934, c. 340, § 14; St.1975, c. 706, § 207.

§ 39. Licensing of persons dealing in bovine and porcine animals; fee; rules and regulations

Every person engaging in the business of dealing in bovine and porcine animals shall obtain a license therefor from the director, the fee for which shall be five dollars, and such license shall expire on November thirtieth following the date of issuance, unless sooner revoked. The director shall, subject to the approval of the commissioner of food and agriculture and of the governor, make rules and regulations governing the issuance and revocation of such licenses and the conduct of the businesses so licensed and relative to the maintenance of premises, buildings and conveyances, the health of bovine and porcine animals and the method and time of inspection and checking of said animals.

Added by St.1941, c. 607, § 1. Amended by St.1971, c. 312, § 1; St.1975, c. 706, § 208.

§ 39A. Pet shops; licensing, necessity, fees, term, issuance, revocation; operation; animals, health inspections

Every person engaged in the business of operating a pet shop, shall obtain a license therefor from the director, the fee for which shall be fifty dollars, and such license shall expire on December thirty-first following the date of issuance, unless sooner revoked. The director, subject to the approval of the governor, may make rules and regulations governing the issuance and revocation of such licenses and the conduct of the businesses so licensed and relative to the maintenance of premises, buildings and conveyances, the health of the birds, mammals or reptiles and the method and time of inspection and checking of said animals.

This section shall not apply to a publicly or privately owned zoological park, a publicly owned animal pound, an institution, as defined in section one of chapter forty-nine A, to persons selling, exchanging or otherwise transferring the offspring of their personally owned animals, or to horse or cattle auctions.

Added by St.1971, c. 993, § 2.

§ 40. License plates for vehicles used for transportation of bovine or porcine animals; fee; revocation

Each vehicle used for the transportation of bovine or porcine animals by any person engaged in the business of dealing in such animals, when operated on any way in the commonwealth, shall bear a metal license plate, attached to the side of the vehicle to the left of the person operating or driving the same, such plate to be furnished by the director upon the payment of a fee of fifty cents. Said plate shall be valid for the term for which the license is granted, but shall be returned to the director on revocation of said license.

Added by St.1941, c. 607, § 1. Amended by St.1946, c. 416, § 1; St.1971, c. 312, § 2.

§ 40A. Hog cholera vaccine; prohibited use

No person shall use, sell, expose for sale, deliver, give away, have in his possession, introduce or deliver for introduction into commerce any hog cholera vaccine.

Added by St.1977, c. 43.

§ 41. Bill of sale or memorandum signed by owner of persons transporting bovine animals; exhibition on demand; application of section

All persons who transport bovine animals upon any public way in connection with the purchase or sale thereof, shall have in their possession a bill of sale or memorandum signed by the owner or vendor of such animals, containing the address of such owner or vendor, the date of purchase or sale, the number of animals, breed, eartag number or other means of identification of each animal.

Any person transporting bovine animals shall on demand exhibit such bill of sale or memorandum to any officer qualified to serve criminal process.

No person shall accept any bovine animal over six months of age which has been transported over any such way unless accompanied by such bill of sale or memorandum. The person accepting such animals shall endorse the bill of sale or memorandum in such manner as will signify his acceptance of each animal.

This section shall not apply to such licensees under section thirty-nine as are exempted from the provisions hereof by the director, by rules or regulations made under the authority of said section thirty-nine.

Added by St.1941, c. 607, § 1.

§ 42. Tagging bovine animal with identification tag

No person, other than a licensed veterinarian or an agent of the director, shall tag a bovine animal with a state or federal identification tag.

Added by St.1941, c. 607, § 1. Amended by St.1966, c. 53.

§ 43. Penalties for violation of sections 39 to 42

Whoever violates any provisions of sections thirty-nine to forty-two, inclusive, or of any rule or regulation made under section thirty-nine or thirty-nine A, shall be punished for a first offence by a fine of not more than one hundred dollars and for any subsequent offence by a fine of not more than five hundred dollars, or by imprisonment for not more than two and one half years, or both.

Added by St.1941, c. 607, § 1. Amended by St.1946, c. 416, § 2; St.1971, c. 993, § 3.

§ 44. Testing of imported equine animals for infectious anemia; certification

No person shall import into the commonwealth any equine animal without a certificate relative to such animal from a laboratory approved by the United States Department of Agriculture, dated within six months from the time of such importation certifying a negative agar gel immunodiffusion test, commonly known as the Coggins test, for equine infectious anemia. Whoever violates any provisions of this section, or of any rule or regulation promulgated hereunder, shall be punished for a first offense by a fine of not more than one hundred dollars and for any subsequent offense by a fine of not more than five hundred dollars, or by imprisonment for not more than two and one-half years, or both.

Added by St.1974, c. 570.

§ 44A. Destruction or quarantine of infected equine animals

Any equine animal positive to an agar gel immunodiffusion test, commonly known as the Coggins test, for equine infectious anemia may be humanely destroyed; provided, that such destruction is observed by an agent of the division or of the United States department of agriculture, or may be so destroyed by a licensed veterinarian who shall report such destruction to the division, or may be sold or given under a permit from the division to an approved slaughter house or research facility, or, at the owner's option, may be retained under quarantine and held in isolation on the owner's premises; provided, however, that it may be pastured, ridden or driven on the owner's premises within a radius of two hundred yards of where it is stabled, provided, that no other horses are stabled or normally ridden or pastured within that area. Upon the discovery of one or more test positive animals within a quarter of a mile of where such animal is normally stabled, all such reactor animals shall be quarantined to screened stalls.

Added by St.1979, c. 566.

§ 45. License to deal in or auction equine animals; regulation; purpose

Every person engaging in the business of dealing in equine animals or auction of said animals and tack shall obtain a license therefor from the director, the fee for which shall be fifty dollars, and such license shall expire on October thirty-first following the date of issuance, unless sooner revoked, provided that the fee for any person licensed under the provisions of section two B of chapter one hundred and twenty-eight of the General Laws shall be five dollars. The director shall, subject to the approval of the commissioner of food and agriculture make rules and regulations governing the issuance and revocation of such licenses and the conduct of the businesses so licensed and relative to the maintenance of premises, buildings and conveyances, the health of equine animals and the method and time of checking and inspection of said animals. The purpose is to prohibit the transportation and slaughter of horses by inhumane means.

Added by St.1977, c. 857.

§ 46. License plates for vehicles transporting equine animals

Each vehicle used for the transportation of equine animals by any person engaged in the business of dealing with such animals, when operated on any way, shall bear a metal license plate, attached to the side of the vehicle to the left of the person operating or driving the same, such plate to be furnished by the director on the payment of a fee of five dollars. Said plate shall be valid for the term for which the license is granted, but shall be returned to the director on revocation of said license. The use of multiple deck vehicles or the so-called "possum belly" vehicle used in the transportation of equine animals is prohibited.

Added by St.1977, c. 857.

§ 47. Bill of sale or memorandum

A person who transports equine animals for immediate slaughter upon any public way in connection with the purchase or sale thereof, shall have in its possession a bill of sale or memorandum signed by the owner or vendor of such animals, containing the address of such owner or vendor, the date of purchase or sale, the number of animals and means of identification of each animal. Any such person transporting such equine animals shall on demand exhibit such bill of sale or memorandum to any officer qualified to serve a criminal process. No such person shall accept any such equine animal which has been transported over any such way unless accompanied by such bill of sale or memorandum. Such person accepting such animals shall endorse the bill of sale or memorandum in such manner as will signify his acceptance of such animals. Horses intended for immediate slaughter shall not be required to have a certificate as provided in section forty-four.

Added by St.1977, c. 857.

§ 48. Violations, penalties

Whoever violates any provisions of section forty-five to forty-seven, inclusive, or any rule or regulation made under section forty-five shall be punished for the first offense by a fine of not more than one hundred dollars and for any subsequent offense by a fine of not more than five hundred dollars, or by imprisonment for not more than two and one half years, or both.

Added by St.1977, c. 857.

CHAPTER 130

MARINE FISH AND FISHERIES

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DEFINITIONS AND RULES OF CONSTRUCTION

§ 1. Definitions; rules of construction

In this chapter, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:

"Angling", fishing with hand line or rod, with naturally or artificially baited hook.

"Canned lobster meat or crab meat", lobster meat or crab meat preserved by heat processing, freezing, or refrigeration, and packed in a container impervious to contamination and so sealed that once opened it cannot be re-sealed and re-used for its original purpose.

"Clam", a marine mollusk of the species Mya arenaria commonly called the soft-shell clam.

"Close season", the time during which fish cannot lawfully be taken.

"Coastal waters", all waters of the commonwealth within the rise and fall of the tide and the marine limits of the jurisdiction of the commonwealth, but not waters within or above any fishway or dam nor waters above any tidal bound legally established by the department of environmental quality engineering in streams flowing into the sea.

"Commissioner", the commissioner of fisheries, wildlife and recreational vehicles.

"Dealer", any person who commercially handles fish.

"Department", the department of fisheries, wildlife and recreational vehicles.

"Director", the director of the division of marine fisheries.

"Division", the division of marine fisheries.

"Fish", any animal life inhabiting the ocean or its connecting waters including any crustacean or marine fish, whether free swimming or free moving, and any shellfish or sea worms, whether or not imbedded in the soil. All provisions of the chapter relative to fish shall, so far as apt, apply also to lobster meat and crab meat after the same has been taken from the shell.

The verb, "to fish", in all of its moods and tenses, to take or to attempt to take fish by any method or means, whether or not such method or means results in their capture.

"Fish car", a box or other contrivance in coastal waters, whether floating or sunken, used for keeping fish alive.

"Lobster", the common American lobster, of the species Homarus americanus.

"Marine fisheries", all fisheries in coastal waters.

"Open season", the time during which fish may lawfully be taken.

"Quahaug", a marine mollusk of the species Venus mercenaria commonly called the hard-shell clam.

"Retail dealer", any person not a wholesale dealer who distributes fish commercially.

"Scallop", a marine mollusk of the species Aequipecten irradians, commonly known as the cape scallop or bay scallop.

"Sea scallop", a marine mollusk of the species Pecten magellanicus, commonly known as deep water scallop.

"Seed clam", a soft-shell clam of a size less than the minimum prescribed in section sixty-nine and useable for planting purposes only.

"Seed quahaug", a quahaug of a size less than the minimum prescribed in section sixty-nine and useable for planting purposes only.

"Seed scallop", an immature scallop without the annual growth line as described in section seventy.

"Shellfish", clams, conchs, mussels, oysters, periwinkles, quahaugs, razor clams or razor fish, scallops, sea clams, sea quahaugs, sea scallops and winkles.

"Short lobster", any lobster measuring less than prescribed in section forty-four.

"Territorial waters", the same as coastal waters.

"Truckman", any person other than a common carrier, using a truck or other vehicle in distributing fish.

"Wholesale dealer", any person who distributes fish commercially in bulk or for resale by a dealer, or who operates branch stores for the retail sale of fish.

A person who knowingly counsels, aids or assists in a violation of any provision of this chapter or of any rule or regulation made thereunder or knowingly shares in any of the proceeds of said violation by receiving or possessing fish, shall be deemed to have incurred the penalties imposed thereby upon the person guilty of such violation.

Whenever the taking of fish is authorized, reference is had to taking by lawful means and in a lawful manner.

Any reference to the taking or having in possession of a fish shall include the taking or having in possession of any part or portion thereof.

This chapter and regulations made under authority thereof shall apply to all fisheries within the jurisdiction of the commonwealth and to all fish within the jurisdiction thereof, except fish being transported through the commonwealth under authority of the laws of the United States; but this provision shall not be construed so as to limit the authority of the director to protect anadromous fish by providing for their passage from the coastal waters to spawning grounds in steams and ponds in inland waters and to regulate commercial fisheries therein for the taking of such anadromous fish.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 98, §§ 1, 2; St.1956, c. 512; St.1963, c. 131; St.1964, c. 524, § 5; St.1971, c. 133, § 1; St.1975, c. 706, §§ 209, 210; St.1978, c. 119, § 6.

MISCELLANEOUS POWERS AND DUTIES OF DIRECTOR, COASTAL WARDENS, ETC.

§ 12. Seizure and forfeiture of fish unlawfully taken; boats and apparatus; sale; proceeds

All fish unlawfully taken, held, possessed or dealt with contrary to any provision of this chapter or of any rule or regulation made under authority thereof, and all boats, vehicles and apparatus used therein, may, in addition to any or all of the penalties contained therein, be seized, libelled and forfeited to the commonwealth.

Whenever seizure and confiscation or forfeiture is provided by any provision of this chapter, unless another procedure is therein indicated such confiscation or forfeiture shall be according to the provisions of chapter two hundred and fifty-seven. Fish so seized except shellfish apparently taken from an area determined under section seventy-four or corresponding provisions of earlier laws to be contaminated, and except fish seized under the provisions of section eighty-nine, may be so libelled or, at the discretion of the director, be disposed of by him for the best interests of the commonwealth, or, in the alternative, be sold at private sale or public auction, and the net proceeds of such sale may be libelled in the same manner and with the same effect as if such proceeds were the property itself, unless the person named in the warrant or some person in his behalf shall before the commencement of such libel or sale request that the fish be preserved until final action is had thereon. Shellfish apparently taken from an area determined to be contaminated as aforesaid, and fish seized under the provisions of section eighty-nine, shall be disposed of by the director in such manner as will prevent the use thereof as food.

Added by St.1941, c. 598, § 1.

§ 20. Co-operation with coastal cities and towns to increase supply of shellfish; expenditures; methods for treatment or purification of shellfish; contracts with federal government

The director shall assist and co-operate with coastal cities and towns for the purpose of increasing the supply of shellfish and exterminating the enemies thereof within their borders, and for this purpose may expend such sums as may be appropriated therefor. The expenditure of any funds so appropriated shall be apportioned by the director among said coastal cities and towns in such amounts as will, in his opinion, effect the greatest amount of relief and assistance to the shellfish industry; provided, that no money shall be expended hereunder in any such city or town for the purpose of such relief or assistance unless such city or town, within one year prior to the date of such expenditure, shall have expended an amount equal to at least one fourth of the total cost of such work, or shall have contributed services or material of a value, as determined by the director, equal to such proportion. The work of increasing the supply of shellfish and exterminating the enemies thereof in coastal cities and towns aided hereunder shall be done and expenditures therefor shall be made in such manner as the director may determine and in accordance with rules and regulations which the director shall make with respect thereto, which rules and regulations he is hereby authorized to make and enforce.

The director, in the operation of any plant for the treatment or purification or propagation of shellfish, is hereby authorized and directed to investigate and study methods for the treatment or purification of shellfish taken from areas determined under section seventy-four to be contaminated. The director, in the course of such investigation, shall confer with the state department of public health and may expend for expert, clerical and other services and expenses such sums as may be appropriated therefor. The director shall, before exercising the authority to assist and co-operate as provided in this section, receive the advice of the biologist of the division and a written opinion from him thereon.

The director, acting on behalf of the commonwealth and with the approval of the governor and council, may enter into contracts or agreements with agencies of the federal government or any private institute or corporation for carrying out research and laboratory work necessary for purposes of the treatment or purification of shellfish and the propagation of shellfish in the coastal areas of the commonwealth, and may expend such sums as may be appropriated for the purpose.

Added by St.1941, c. 598, § 1. Amended by St.1948, c. 430, § 1.

POLLUTION OF COASTAL WATERS

§ 23. Discharge of oil or other poisonous substances into coastal waters; use of explosives; penalty

Except in the case of emergency imperilling life or property or an unavoidable accident or except in accordance with the terms of a permit issued pursuant to state or federal water pollution control laws, whoever from any source puts, throws, discharges or suffers or permits to be discharged or to escape into any coastal waters, any oil, poisonous or other injurious substance, including but not limited to, sawdust, shavings, garbage, ashes, acids, sewage and dye-stuffs, whether simple, mixed or compound, or heated effluent, which directly or indirectly materially injure fish, fishspawn or seed therein, or takes any such fish by such means, or whoever kills or destroys fish in such waters by the use of dynamite or other explosives, or takes any such fish in such waters by such means, or explodes dynamite or other explosive in such waters, shall be punished by a fine of not less than one hundred and fifty nor more than five thousand dollars or by imprisonment for not more than one year or both.

Added by St.1941, c. 598, § 1. Amended by St.1972, c. 789, § 2.

§ 24. Violation of section 23; tort liability

Whoever, contrary to any provision of section twenty-three, himself, or by his agent or servant, does, or allows or suffers to be done, any act causing damage to the shellfish resources within the limits of a city or town shall be liable to said city or town in tort, in triple the amount of damage thereby done.

Whoever, contrary to any provision of section twenty-three, himself, or by his agent or servant, does, or allows or suffers to be done, any act causing damage to any fishery resource, with the exception of shellfish located within the limits of a city or town, within the marine boundaries of the commonwealth, shall be liable to the commonwealth in tort, in triple to the amount of damage thereby done.

Whoever, contrary to any provision of section twenty-three, himself, or by his agent or servant, does, or allows or suffers to be done, any act causing damage to any private fishery resource within the marine boundaries of the commonwealth, shall be liable in tort, in triple the amount of the damage, to any person owning or leasing such private fishery rights.

Added by St.1941, c. 598, § 1. Amended by St.1972, c. 789, § 2.

§ 25. Discharge of sewage or other substance injurious to public health into coastal waters; approved drainage

The entrance or discharge into the coastal waters, or the tributaries of such waters, of sewage or any other substance which might be injurious to the public health or might tend to contaminate any shellfish areas or shellfish therein which may be determined by the director to be of commercial value, or injuriously affect the fisheries therein, is hereby prohibited; provided, that this section shall not be deemed to interfere with the exercise of any right of drainage which had been approved by the department of public health prior to January first, nineteen hundred and forty-two, or in any drainage thereafter approved by said department or the department of environmental quality engineering; provided further, that before granting such new approval the commissioner of environmental quality engineering shall have consulted with the director as to the value of the marine fisheries involved. The provisions of this section shall not apply to any such entrance or discharge of heated effluent authorized under the terms of a permit for such entrance or discharge issued pursuant to state or federal water pollution control laws.

Added by St.1941, c. 598, § 1. Amended by St.1972, c. 789, §§ 3, 4; St.1975, c. 706, § 213.

§ 26. Jurisdiction and proceedings to enforce sections 23 to 25

The supreme judicial court or any justice thereof, and the superior court or any justice thereof, shall have jurisdiction in equity to enforce sections twenty-three, twenty-four and twenty-five. Proceedings to enforce the same may be instituted and prosecuted by the attorney general at the request of the commissioner.

Added by St.1941, c. 598, § 1. Amended by St.1972, c. 789, § 5.

§ 27. Criminal and tort liability for discharge of sewage or other substance injurious to public health into coastal waters

Whoever, contrary to any provision of section twenty-five, himself, or by his agent or servant, permits the entrance or discharge into or on any part of said coastal waters or tributaries of such waters, sewage, heated effluent, or any other substance injurious to public health or tending to contaminate any shellfish area or shellfish therein, within the limits of a city or town, shall be punished by a fine of not less than one hundred and fifty nor more than five thousand dollars or by imprisonment for not more than one year or both and shall be liable in tort, to said city or town, in triple the amount of damage thereby done.

Whoever, contrary to any provision of section twenty-five, himself, or by his agent or servant, permits the entrance or discharge into or on any part of said coastal waters or tributaries of such waters, sewage, heated effluent, or any other substance injurious to public health or causing injury or damage to any fishery resource, with the exception of shellfish located within the limits of a city or town, within the marine boundaries of the commonwealth, shall be punished by a fine of not less than one hundred and fifty dollars nor more than five thousand dollars or by imprisonment for not more than one year or both and shall be liable in tort to the commonwealth, in triple the amount of damage thereby done.

Whoever, contrary to any provision of section twenty-five, himself, or by his agent or servant, permits the entrance or discharge into or on any part of said coastal waters or tributaries of such waters, sewage, heated effluent, or any other substance injurious to public health or causing injury or damage to any private fishery resource within the boundaries of the commonwealth shall be liable in tort, to the owners or lessees of any private rights therein, in triple the amount of damage thereby done.

Added by St.1941, c. 598, § 1. Amended by St.1972, c. 789, § 6.

LOCAL CONTROL OF SHELLFISHERIES

§ 52. Taking of eels, shellfish and sea worms; permits; fees; publication of regulations; records; temporary control by director; areas in which commercial taking prohibited

The selectmen of a town bordering upon coastal waters, if so authorized by their town, and the board of aldermen or the city council of any city so situated may control, regulate or prohibit the taking of eels and any or all kinds of shellfish and sea worms within such cities and towns and may, from time to time, without other or special authority therefor, make any regulations not contrary to law in regard to said fisheries as they deem expedient, including the times, places, methods, purposes, uses, sizes, quantities and any other particulars of such taking, and may grant permits, and establish the fees therefor, subject to any such regulation, then or thereafter in force. Any such authorizations to said selectmen hereunder shall continue in force until subsequent action of such town shall repeal the same. Any regulations made under authority of this section shall continue in force until the board of aldermen, city council, or selectmen, as the case may be, shall alter, amend, rescind or repeal the same, or the authority of the selectmen to make and enforce such regulations shall be repealed. No city or town shall require a person to be licensed to take shellfish who is accompanying or operating a boat for a person so licensed and who is not otherwise actively engaged in or assisting in such fishing.

Any regulations made hereunder shall take effect as therein stated, shall be published by posting a copy of the same in the office of the aldermen, city council or selectmen making the same, and in the office of the city or town clerk, and in three or more public places in said city or town, or by publishing the same once in a newspaper, if any, published in said city or town, and by sending a certified copy thereof to the director, twenty-four hours at least before the time set for the same to take effect; provided that the director may, if he deems it necessary for the protection of shellfish in emergency, authorize the making of such regulations effective immediately, in which case publication shall be made within forty-eight hours after the same shall take effect. The records of the aldermen, city council or selectmen, as to the contents of the regulations, and the method and time of publication thereof, or a copy thereof attested by their secretary, shall be prima facie evidence of such facts therein stated. The records of the town as to the instructions to the selectmen, or a copy thereof attested by the town clerk, shall be prima facie evidence of such instructions.

If any city or town bordering on the coastal waters neglects or refuses to take the control of the shellfish, sea worms or eels within its boundaries as provided in this section, such control shall be temporarily exercised by the director for the benefit of such city or town and such authority shall continue until such time as the aldermen or city council of such city or the selectmen under authority of a vote of such town shall take over such control. Nothing in this paragraph shall be construed as authorizing the director to take control of or exercise the authority provided in this section over the taking of clams from any areas leased from the commonwealth by cities or towns in Essex county as provided in chapter seven hundred and ten of the acts of nineteen hundred and twelve and amendments thereto nor shall such authority extend to the issuance of private shellfish grants as provided in section fifty-seven.

Every city or town which exercises the authority over such coastal fisheries as provided in this section shall set aside an area or areas not then in private control or under municipal cultivation in which the commercial taking of shellfish shall be prohibited and from which shellfish may be taken, for his own family use, by any inhabitant of the commonwealth holding a permit therefor from such city or town. In any city or town issuing such permits to take shellfish for family use, any inhabitant of the commonwealth shall be issued such a permit upon payment of the fee, if any, established therefor. Such permits shall be uniform, and the regulations established in connection therewith shall make no distinction among different classes of permit holders except with respect to the amount of the fee therefor. Such permit shall not allow the taking of shellfish of a size at a season prohibited by law and the amount therefor taken for any family shall not exceed in any one week, one bushel of any or all kinds of shellfish, but the councilmen or selectmen, as the case may be, may, with the approval of the director, reduce the maximum amount of any or all of such shellfish taken for such purpose.

Nothing in this section shall be construed to authorize the aldermen, city council or selectmen to exercise any authority hereunder in areas declared under section seventy-four or under corresponding provisions of earlier laws to be contaminated unless such action is in accordance with a management plan developed by cities and towns with the assistance and approval of the director.

Added by St.1941, c. 598, § 1. Amended by St.1970, c. 236; St.1972, c. 33; St.1977, c. 447, § 2.

§ 53. Form of permits; record of issuance

All permits issued under section fifty-two shall be issued in the name of the body authorizing the issuing of the same; but, under a vote of such body, any such permit shall be valid if issued bearing the signature of any one member thereof, or of the city or town clerk. A record of the name, residence and address of every person to whom such a permit is issued, with any special details relating to such permit, shall be entered by the officer issuing the same in a book kept in his office for that purpose.

Added by St.1941, c. 598, § 1.

PRIVATE SHELLFISH GRANTS

§ 57. Licenses granted by cities and towns; application; notice and hearing; qualifications; forms

The city council of a city or the selectmen of any town may, upon written application therefor and after public notice and hearing thereon as provided in section sixty, grant to any person a license for a period not exceeding ten years to plant, grow, and take shellfish and to plant cultch for the purpose of catching shellfish seed, in such city or town at all times of the year, in, upon or from a specific portion of flats or land under coastal waters, provided the division of marine fisheries shall, after inspection, certify that the license and operation thereunder would cause no substantial adverse effect on the natural shellfish resources of the town, and provided further, no license shall be issued for any area then or within two years prior thereto, closed for municipal cultivation under the provisions of section fifty-four. Licenses under this section shall be issued upon forms supplied by such cities and towns and upon such terms and conditions and subject to such regulations as the city council or selectmen issuing the same shall deem proper, but not so as to impair the private rights of any person or to materially obstruct navigable waters, and they shall describe by metes and bounds the waters, flats or creeks covered thereby.

Nothing in this section shall be deemed to affect the validity, conditions, or term of any license granted under corresponding provisions of earlier laws and in full force upon the effective date of this section.

Added by St.1941, c. 598, § 1. Amended by St.1973, c. 931, § 2.

§ 58. Transfer or renewal of licenses

Any license granted under section fifty-seven or corresponding provisions of earlier laws may be transferred with the approval of the city council or selectmen to any person to whom it might originally have been granted, and, whether or not so transferred, may, within two years before the expiration of its then current term, be renewed for a further term of not exceeding fifteen years from the expiration of the original term. The provisions of this chapter or of corresponding provisions of earlier laws applicable to the original issuance of such license shall, so far as apt, apply to a transfer or a renewal thereof hereunder.

Added by St.1941, c. 598, § 1. Amended by St.1973, c. 931, § 3.

§ 59. Application for license; request for survey and plan

Any person, firm or corporation qualified as provided in section fifty-seven and desiring to obtain a license thereunder shall present to the city council or selectmen a written application setting forth the name and residence of the applicant, a definite description made by reference to a survey conducted by the applicant, and a request that such license be granted to the applicant.

Added by St.1941, c. 598, § 1. Amended by St.1973, c. 931, § 4.

§ 60. Hearing on issuance of license; notice; publication

No license referred to in section fifty-seven shall be granted, transferred or renewed until after a public hearing, due notice of which has been posted in three or more public places, and published in a newspaper, if any, published in the city or town where the territory described in the application is situated at least ten days before the time fixed for the hearing, stating the name and residence of the applicant or transferee, as the case may be, the date of the filing of the application for such license, transfer or renewal, and the location, area and description of said territory.

Added by St.1941, c. 598, § 1.

§ 68. Digging, taking or carrying away shellfish from licensed waters, flats or creeks at night; violations

No person shall dig, take or carry away any shellfish or shells between one half hour after sunset and one half hour before sunrise, by any method whatever, from any waters, flats or creeks as to which a license under section fifty-seven or corresponding provisions of earlier laws is outstanding. A licensee or transferee of such a license violating this section shall, in addition to all other penalties provided, forfeit his license and the shellfish remaining on the licensed premises.

Whoever violates any provision of this section, or whoever, without the consent of the licensee or transferee, digs or takes any shellfish or shells from any waters, flats or creeks described in any license granted under section fifty-seven, or corresponding provisions of earlier laws, during the continuance of such license or of any renewal thereof, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not less than one nor more than six months, or both.

Added by St.1941, c. 598, § 1.

CERTAIN SHELLFISH

§ 69. Seed quahaugs, clams or oysters; taking or possession

Whoever takes or has in possession quahaugs or soft-shelled clams less than two inches in longest diameter or oysters less than three inches in longest diameter, hereinafter referred to as seed quahaugs, seed clams or seed oysters, to the amount of more than five per cent of any batch shall be punished by a fine of not less than five nor more than fifty dollars or by imprisonment for not more than thirty days; provided, that it shall not be unlawful to take seed quahaugs, seed clams or seed oysters or have the same in possession under authority of a permit therefor, which the director is hereby authorized to grant, for replanting in waters or flats within the commonwealth.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 98, § 6; St.1959, c. 201.

§ 70. Taking and sale of scallops; adult and seed scallops; culling; rules and regulations

No person shall take from the flats or coastal waters of the commonwealth scallops other than adult scallops, or sell or offer for sale or have in possession such scallops. For the purposes of this section an adult scallop shall be a scallop with a well-defined raised annual growth line, and any scallop without such line shall be deemed a "seed" scallop. Scallops taken from the coastal waters shall immediately be culled when taken, and all scallops other than adult scallops shall forthwith be returned alive to the coastal waters whence taken; but it shall not be unlawful to sell or have in possession scallops other than adult scallops unavoidably left in the catch after it has been culled, to the amount of not more than five per cent of the total catch remaining. All scallops taken in accordance with this section shall be taken ashore in the shell. This and section seventy-one shall not apply to seed and adult scallops carried by storm or tide from the natural beds and deposited on beaches and flats where, in the opinion of the director, they cannot survive, but the taking of said seed scallops and the taking and sale of said adult scallops may be authorized by him at any season of the year. The director shall promulgate rules and regulations governing the taking and sale of said seed and adult scallops by special permits, which he is empowered to issue without fee, or otherwise so as to prevent the sale of seed scallops at any time, or the sale of adult scallops between April first and the following October first, except as authorized herein. Whoever violates any provision of this section shall be fined not less than ten nor more than fifty dollars and imprisonment for thirty days or both.

Added by St.1941, c. 598, § 1.

SHELLFISH IN CONTAMINATED AREAS

§ 74. Determination of contaminated areas; notice of results; procedures

The department of environmental quality engineering shall examine from time to time as conditions may require, or upon the request of the director, the commissioner of public health, the mayor or city manager of a city, or the selectmen or town manager of a town, but not more frequently than once in two years, the coastal waters and flats of the commonwealth and samples of shellfish therein or thereon in order to determine what areas thereof are so contaminated that shellfish obtained therefrom are unfit for food and dangerous to the public health. The department of environmental quality engineering shall forward the results of all tests as directed by the commissioner of public health. If, after such examination, either department determines that such contamination exists, it shall, by written order, promulgate definite bounds of the area or areas so determined to be contaminated, and may specify the period of time during which such determination shall be in effect. Before such determination shall be in effect, the department making such a determination shall

(1) Publish the results of its determination thereof in a newspaper published in each city and town in which or adjacent to which any such contaminated area is situated.

(2) File in the office of the clerk of every such city and town the results of such determination.

(3) Cause to be posted at points on or near every such area a description thereof, specifying said bounds and a statement that such area is contaminated.

(4) Notify the directors of the division of marine fisheries and the division of law enforcement of its determination by filing with them properly authenticated copies, certified by the secretary of state, of its determination, publication, filing and posting.

Whenever, as a result of a subsequent examination of an area or areas determined by said department to be contaminated, it determines that the shellfish in such area or areas are safe to use as food, notice of such determination shall be published immediately, and the directors notified thereof; provided, however, that if the said department has specified a period of time during which the determination of pollution shall be in effect, such publication and notice shall not be required if such period has expired. The record of any examination hereunder and the bacteriological counts made therein shall be subject to inspection upon request.

Personnel of the department of public health and the department of environmental quality engineering in the performance of their duties under this section, may enter upon and pass through or over private lands or property whether or not covered by water.

The presentation in evidence by any officer of the commonwealth empowered to enforce this chapter of a document attested by the commissioner of either department or his deputy to the effect that the provisions of this section have been complied with shall be prima facie evidence that an effective determination has been made.

This section shall not apply to scallops.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 99, § 1; St.1948, c. 463; St.1954, c. 243, § 1; St.1960, c. 324; St.1967, c. 51; St.1975, c. 706, § 215.

§ 74A. Emergency designation of contaminated shellfish areas; enforcement; notice to local authorities

Both the department of public health and the department of environmental quality engineering shall have the authority immediately to designate shellfish areas as contaminated and that shellfish obtained therefrom are unfit for food and dangerous to the public health, in the event of an emergency as determined by either department. Such designation shall be reported to the director of the division of marine fisheries and to the division of law enforcement, who shall take the necessary action to prevent the taking of shellfish from such area for human consumption and so notify local authorities in each instance. Such determination shall be in effect until subsequent examination, initiated not more than thirty days after the emergency has been determined, shows the shellfish from such area to be safe for human consumption and the department or departments which designated the emergency declare it to be over. In the event that the department of public health determines that there is an emergency, the commissioner of public health shall have the power to direct the activities of all employees of the department of environmental quality engineering who are regularly engaged in monitoring the condition of shellfish during that emergency.

Added by St.1956, c. 288, § 1. Amended by St.1975, c. 706, § 216.

§ 75. Shellfish from contaminated areas, permits, purification; shellfish conservation; violations

The director may grant, and may revoke, written permits for the digging or taking of shellfish from an area determined under section seventy-four or corresponding provisions of earlier laws to be contaminated while such determination is in force, every such permit to be upon the express condition, which shall be set forth therein, that all shellfish dug or taken from the area or areas covered by such permit by the holder thereof shall, before being used or disposed of for consumption as food, be purified at a plant, or by a method, approved in writing by the commissioner of the department of environmental quality engineering, after appropriate review and comment by the commissioner of the department of public health and upon such further conditions and regulations as will, in the opinion of the director, most effectively prevent the use of said shellfish as food until so purified. For the purpose of this paragraph the director, upon receipt of the proper fees, may issue the following classes of permits:—a master digger's permit for an individual who digs or takes shellfish from such areas for such purification; a digger's permit for an individual who digs shellfish for the holder of a master digger's permit; and a bait permit for an individual who digs and takes shellfish from such areas for bait purposes only; provided, that no person shall be eligible for a bait permit hereunder who has a digger's permit or who sells shellfish for food purposes. Any city or town may develop a shellfish conservation and management plan containing such information as the director may require and shall submit said plan to the director for his approval. Any city or town having a plan approved by the director may require permits for the taking of shellfish from areas determined under section seventy-four to be contaminated, provided that all other permits and licenses required by law are obtained. Fees shall be reasonable and commensurate with the services provided by the city or town. If at any time the director finds any city or town in violation of any provision of its approved shellfish conservation and management plan he may forthwith withdraw his approval of such plan. No city or town permit shall be required by any master digger or subordinate on any mildly contaminated area where the director has withdrawn his approval of that city or town's shellfish conservation and management plan as provided herein until such plan is deemed approved by the director. In evaluating the plan for approval, the director shall take into consideration the city or town's efforts to fairly administer the distribution of, and fees for, local permits to be issued to residents and nonresidents.

Whoever, without a permit as provided in this section or contrary to the provisions of such permit, digs or takes shellfish for any purpose from any area determined under section seventy-four or section seventy-four A or under corresponding provisions of earlier laws to be contaminated, while such determination is in force, or knowingly transports or causes to be transported or has in his possession shellfish so dug or taken, shall be punished, if the violation occurred between one half hour before sunrise and one half hour after the following sunset, by a fine of not less than fifty nor more than two hundred dollars or by imprisonment for not more than sixty days, or both, and, if the violation occurred between one half hour after sunset and one half hour before the following sunrise, by a fine of not less than one hundred nor more than three hundred dollars or by imprisonment for not more than ninety days, or both, and whoever makes use of such a permit after its revocation or cancellation or wilfully fails to surrender the same at the request of said director shall be punished by a fine of not less than twenty nor more than one hundred dollars or by imprisonment for not more than sixty days, or both. The superior court shall have jurisdiction in equity to enforce this section and the rules and regulations of the director made hereunder and to restrain the violation thereof. In any prosecution for a violation of this section the possession, except by a common carrier, of shellfish apparently so dug or taken without a permit herein referred to shall be prima facie evidence of a violation thereof.

Added by St.1941, c. 598, § 1. Amended by St.1956, c. 288, § 2; St.1965, c. 124; St.1977, c. 331; St.1977, c. 447, § 3.

PURIFICATION PLANTS

§ 76. Construction and operation; powers of commissioner

The commissioner of the department of fisheries, wildlife, and recreational vehicles, may construct and operate shellfish purification plants for the treatment of shellfish taken from areas determined under section seventy-four or corresponding provisions of earlier laws, to be contaminated, and may operate such existing purification plants to serve such areas as he may deem necessary for these purposes.

Said commissioner may acquire by purchase, gift, lease or otherwise, or take by eminent domain under chapter seventy-nine, such land and buildings thereon as may be necessary for the purposes of this section. Said commissioner or his designee shall have sole authority over the acceptance, treatment and discharge of shellfish at such plants, subject to rules and regulations, which the department of environmental quality engineering is hereby authorized and directed to adopt, relative to the protection of the public health in the consumption of such shellfish.

Added by St.1941, c. 598, § 1. Amended by St.1948, c. 365; St.1961, c. 506, § 1; St.1975, c. 706, §§ 217, 218.

§ 77. Cost of operation

For the purpose of partially defraying the costs of the operation and maintenance of shellfish purification plants, the department of fisheries, wildlife and recreational vehicles shall charge the users of said service the sum of one dollar and fifty cents per one-half bushel.

Added by St.1941, c. 598, § 1. Amended by St.1961, c. 506, § 2; St.1975, c. 77, § 1; St.1977, c. 30; St.1978, c. 293.

COMMERCIAL PERMITS AND CERTIFICATES

§ 80. Issuance; transfers; wholesale dealer permit; regulated marine fishery permit; rules and regulations; cancellation; revocation; fine

Except as permitted in sections thirty-eight and seventy-five, no person shall fish for or take fish for commercial purposes in the coastal waters, or land raw fish, whether frozen or unfrozen, in the commonwealth, for the purpose of sale unless he is the holder of a commercial fisherman permit. A commercial fisherman permit may be issued to an individual or it may be issued in the name or number of a vessel, in which case it shall be valid for all persons on board said vessel. A vessel permit may be transferred upon application to the director. Notwithstanding any contrary provisions contained in this section and except as provided in section seventy-five, a person shall not dig or take shellfish or marine worms for commercial purposes unless he is the holder of a commercial fisherman permit (shellfish) or unless he is the holder of a commercial fisherman permit which has been specially endorsed, at no additional charge, for the taking of such shellfish or marine worms; a person holding a permit issued under section seventy-five shall not hold a permit issued under this section for the taking or digging of shellfish or marine worms. Notwithstanding any contrary provision contained in this section, a person may take by rod and reel or by diving and sell finfish lawfully taken from the coastal waters in an amount not exceeding one hundred pounds per day plus one fish, and a person who has in his possession a commercial fisherman permit (rod and reel—unlimited) may take by rod and reel or by diving and sell finfish lawfully taken from the coastal waters.

A person shall not for commercial purposes acquire, handle, store, distribute, process, fillet, ship or sell raw fish, whether frozen or unfrozen, in bulk or for resale without first obtaining a wholesale dealer permit, provided that the holder of a valid commercial fisherman permit who catches fish or takes lobsters and sells such fish or lobsters to wholesale or retail dealers exclusively shall be exempt from obtaining a wholesale dealer permit. A person shall not sell raw fish, whether frozen or unfrozen, at retail without a retail dealer permit, provided that the holder of a wholesale dealer permit may sell fish at retail at one location which shall be named on the permit. Upon application to the director and endorsement on the permit the holder of a retail dealer permit may take bait, except as provided in section seventy-eight, for sale under said permit.

A person shall not for commercial purposes shuck shellfish, or pack or repack shucked shellfish, or dig, take, pack or buy shellfish within this commonwealth for shipment outside the commonwealth, without the approval of the director which shall be endorsed on the certificate or permit held by such person at no additional cost.

No person shall take or sell fish from a fishery regulated by the director without a regulated marine fishery permit, in addition to any other permit that may be required by this chapter.

The director shall promulgate rules and regulations relative to the form, contents and use of all permits issued under this chapter. At the request of the commissioner of public health, or on his own motion, the director shall revoke and cancel and require the surrender of any certificate issued by him under this chapter if, in his opinion, after a hearing, after due notice, by him or some person designated by him, the holder has violated any rule or regulation of the director or of the department of public health pertaining to fish, or the sale thereof, or of any provision of this section or section seventy-five, or upon a change in the facts and conditions set forth in such certificate. Pending the hearing the certificate shall be suspended. Whoever violates any provision of this section shall be punished by a fine of not less than ten nor more than fifty dollars or by imprisonment for thirty days, or both.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 98, § 7; St.1961, c. 199, §§ 1, 2; St.1964, c. 524, § 11; St.1967, c. 878; St.1970, c. 861, § 5; St.1971, c. 442, §§ 2, 3.

§ 81. Importation of shellfish for consumption; certification; labeling of containers; penalty; enforcement

No person shall transport, or cause to be transported, into this commonwealth for consumption as food any shellfish taken or dug from areas outside the commonwealth, or sell, cause to be sold, or keep, offer or expose for sale for consumption as aforesaid any shellfish so taken or dug, unless such person has been certified by the regulatory authority in the United States or foreign country under the uniform sanitation requirements of the cooperative program for the certification of interstate shellfish shippers, nor shall any person transport or cause to be transported within this commonwealth any shellfish for consumption as food, unless the container of such shellfish shall, at all times while in such transportation, bear a label or tag legibly marked with the name and address of the producer and of the shipper thereof and the numbers of such certificates, and the name of the place where and the date when taken, and absence of such label or tag so marked or failure to allow an inspection shall be prima facie evidence of violation of this section; provided, that the foregoing provisions relative to transportation shall not apply to common carriers, their servants or agents.

Whoever violates any provision of this section shall be punished by a fine of not less than ten nor more than fifty dollars or by imprisonment for not more than thirty days, or both. The provisions of this section shall be enforced by the department of public health, local boards of health, the director and all officers qualified to serve criminal process; provided, that the provisions of this section and of section eighty-two shall not apply to shellfish taken from an area declared to be contaminated under the provisions of section seventy-four or corresponding provisions of earlier laws.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 99, § 2; St.1955, c. 711; St.1961, c. 199, § 3; St.1965, c. 70.

§ 82. Source of supply of shellfish; tags or labels; contents; record of markings on tags or labels; inspection

No wholesale or retail dealer in shellfish, and no person holding a victualler's license, shall receive any shellfish unless the same bears a label or tag legibly marked with the source of supply, the date when taken, and either the certificate or permit number or the name and address of the producer or shipper, and all shellfish in transit shall bear such label or tag so marked. If such shellfish have been processed at a shellfish purification plant operated under the provisions of section seventy-six, the label or tag shall be so marked, and shall contain such other information as the director may by rule or regulation require. He shall for sixty days after receipt of such shellfish keep in his place of business a record of the markings on such tag or label, which record shall at all reasonable times be open to inspection by any representative of the division or of the department of public health. Whoever violates any provision of this section or fails or neglects to furnish the required label or tag or furnishes such a label or tag bearing false or misleading information shall be punished by a fine of not less than ten nor more than fifty dollars or imprisonment for thirty days, or both.

Added by St.1941, c. 598, § 1. Amended by St.1945, c. 99, § 3; St.1961, c. 199, § 4; St.1964, c. 257, § 1.

§ 83. Fees for certificates and permits

For the purpose of defraying the cost of the division's research, management and activities, including administrative and operating expenses, and the costs of issuing certain permits and the inspection relative thereto the following fees shall be paid to the director by the person to whom the same is issued for any calendar year or part thereof:

	Type of Permit	Fee
A.	Commercial Fisherman (For the taking of fish for sale)	
	Individual (For named individual only)	$25.00
	Shellfish	15.00
	Rod and Reel—Unlimited (For the sale of finfish lawfully taken by rod and reel or by diving	5.00
	Boat (100 feet or more in total length)	100.00
	(60 to 99 feet in total length)	75.00
	(up to 59 feet in total length)	50.00
	Lobster (For the taking of lobsters for sale)	100.00
	Seasonal lobster	25.00
B.	Wholesale dealer (Any wholesaler dealing in fresh or raw fish)	50.00
C.	Retail dealer (Any retailer dealing in fresh or raw fish)	25.00
D.	Special Permits	
	Noncommercial lobster and crab (up to 10 pots and/or diving privileges)	15.00
	Contaminated shellfish (bait)	10.00
	Master Digger	50.00
	Subordinate Digger	15.00

Regulated fishery (for fishing in special areas, etc.)	$10.00
Others, miscellaneous	5.00
E. Duplicate (Replacing originals)	3.00

Added by St.1941, c. 598, § 1. Amended by St.1965, c. 697; St.1970, c. 861, § 6; St.1974, c. 262.

SCALLOPS

§ 92. Sale of scallops; soaked scallops; scallops not in shell; marking of containers; common carriers

No person shall sell, exchange, transport or deliver, or offer or expose for sale, exchange or deliver, or have in his custody or possession with intent to sell, exchange, transport or deliver, any scallops which have been soaked, or any scallops not in the shell unless such scallops are in a box, carton, tray or other container plainly and conspicuously stamped, labelled or marked with (*a*) the word "Massachusetts", followed by the name of the town or of the locality where taken, if taken from waters or flats within the commonwealth; or (*b*) the name of the state, country or province where taken, if taken from waters or flats outside the commonwealth; or (*c*) the words "Sea Scallops", if of the species commonly so known. Said box, carton, tray or container shall also be marked in the same manner with the number of the certificate under which said scallops were removed or with such other identification as may be required by the director by rule or regulation, which he is hereby authorized to adopt.

Whoever fails to comply with any provision of this section, or whoever falsely stamps, labels or marks such a box, carton, tray or other container, or whoever falsely advertises any of the shellfish herein referred to, shall be punished by a fine of not less than fifty nor more than five hundred dollars or imprisonment for thirty days or both.

This section shall not apply to common carriers having scallops in possession for the purpose of transportation.

Added by St.1941, c. 598, § 1. Amended by St.1961, c. 199, § 5; St.1971, c. 133, § 2.

MISCELLANEOUS PROVISIONS

§ 98. Shellfish constables; appointment; powers and duties; notice of appointment

In each city and town bordering on coastal waters the mayor or the selectmen, as the case may be, shall appoint a person or persons, qualified by training and experience in the field of shellfishery management, as shellfish constables or deputy shellfish constables. Such shellfish constables and deputy shellfish constables shall be appointed for terms of three years, and may be reappointed. They shall, subject to the appointing authority, initiate, promote and manage shellfisheries in such city or town and shall make or cause to be made such studies as may be necessary to enhance the value of such shellfisheries. They shall enforce all statutes, ordinances, by-laws, rules and regulations relative to shellfish in such city or town. They shall, for the enforcement of sections thirty-one, thirty-seven, forty-one, forty-three and forty-four, have the authority granted to natural resource officers, subject to written rules and regulations of the commissioner. In the performance of his duties, a shellfish constable or deputy shellfish constable may request any person who he has cause to believe is engaged in unlawful shellfishing, is in unlawful possession of shellfish, or is in possession of shellfish unlawfully taken, to display forthwith for inspection all shellfish in his possession, and he may arrest without a warrant any person refusing or failing to comply with such request.

Upon the appointment of a shellfish constable or deputy shellfish constable under this section, the appointing authority shall forthwith notify the director of the division of marine fisheries and the director of the division of law enforcement.

Added by St.1941, c. 598, § 1. Amended by St.1965, c. 439; St.1972, c. 34; St.1974, c. 209.

§ 105. Protection of coastal wetlands

The commissioner of environmental management, with the approval of the board of environmental management, may from time to time, for the purpose of promoting the public safety, health and welfare, and protecting public and private property, wildlife and marine fisheries, adopt, amend, modify or repeal orders regulating, restricting or prohibiting dredging, filling, removing or otherwise altering, or polluting, coastal wetlands. In this section the term "coastal wetlands" shall mean any bank, marsh, swamp, meadow, flat or other low land subject to tidal action or coastal storm flowage and such contiguous land as the commissioner of environmental management reasonably deems necessary to affect by any such order in carrying out the purposes of this section.

The commissioner of environmental management shall, before adopting, amending, modifying or repealing any such order, hold a public hearing thereon in the municipality in which the coastal wetlands to be affected are located, giving notice thereof to the state reclamation board, the department of public works and the department of environmental quality engineering and each assessed owner of such wetlands by mail at least twenty-one days prior thereto.

Upon the adoption of any such order or any order amending, modifying or repealing the same, the commissioner of environmental management shall cause a copy thereof, together with a plan of the lands affected and a list of the assessed owners of such lands, to be recorded in the proper registry of deeds or, if such lands are registered, in the registry district of the land court, and shall mail a copy of such order and plan to each assessed owner of such lands affected thereby. Such orders shall not be subject to the provisions of chapter one hundred and eighty-four. Any person who violates any such order shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment for not more than one month, or by both such fine and imprisonment.

The superior court shall have jurisdiction in equity to restrain violations of such orders.

Any person having an ownership interest, any lessee holding a lease of twenty-five years length or more and any mortgagor having an interest in land affected by any such order, may, within ninety days after receiving notice thereof, petition the superior court to determine whether such order so restricts the use of his property as to deprive him of the practical uses thereof and is therefor an unreasonable exercise of the police power because the order constitutes the equivalent of taking without compensation. If the court finds the order to be an unreasonable exercise of the police power, as aforesaid, the court shall enter a finding that such order shall not apply to the land of the petitioner; provided, however, that such finding shall not affect any other land than that of the petitioner. The commissioner of environmental management shall cause a copy of such finding to be recorded forthwith in the proper registry of deeds or, if the land is registered, in the registry district of the land court. The method provided in this paragraph for the determination of the issue of whether any such order constitutes a taking without compensation shall be exclusive, and such issue shall not be determined in any other proceeding, nor shall any person have a right to petition for the assessment of damages under chapter seventy-nine by reason of the adoption of any such order.

The department of environmental management may, after a finding has been entered that such order shall not apply to certain land as provided in the preceding paragraph, take the fee or any lesser interest in such land in the name of the commonwealth by eminent domain under the provisions of chapter seventy-nine and hold the same for the purposes set forth in this section.

No action by the commissioner of environmental management or the department of environmental management under this section shall prohibit, restrict or impair the exercise or performance of the powers and duties conferred or imposed by law on the department of public works, the department of environmental quality engineering, the state reclamation board or any mosquito control or other project operating under or authorized by chapter two hundred and fifty-two.

No order adopted hereunder shall apply to any area under the control of the metropolitan district commission. No order adopted hereunder shall permit the construction in coastal wetlands of access driveways to unrestricted land except in a manner which allows the flow of the tide.

Added by St.1965, c. 768, § 1. Amended by St.1975, c. 351; St.1975, c. 706, § 220; St.1979, c. 315, § 1.

CHAPTER 131. INLAND FISHERIES AND GAME AND OTHER NATURAL RESOURCES

Sec.

1. Definitions; rules of construction.
25A. Quarantine of diseased fish, birds, mammals, etc.; order or notice; procedures; liability for expenses.
25B. Destruction and disposal of diseased fish, birds, mammals, etc., under quarantine.
25C. Fish, birds, mammals, etc., under quarantine deemed diseased; prohibited acts; penalties.
40. Removal, fill, dredging or altering of land bordering waters; definitions; procedures; enforcement; exceptions; penalties.
41. Protection of fisheries from discharge of waste materials into inland waters.
42. Protection of fish in inland waters; pollution; alterations of flows or water levels; application of section; damages.
43. Poisons.
44. Deposit of garbage, etc., on property while hunting, fishing or trapping.

§ 1. Definitions; rules of construction

In this chapter, unless the context otherwise requires, the following words shall have the following meanings and the following rules of construction shall apply:—

"Angling", fishing with hand line or rod, with a hook baited with natural or artificial bait.

"Assistant", any assistant to the director of law enforcement, appointed under section six of chapter twenty-one, or under section thirty of chapter five hundred and twenty-four of the acts of nineteen hundred and sixty-four.

"Birds", wild or undomesticated birds.

"Closed season", the time during which fish, birds or mammals cannot lawfully be taken.

"Coastal waters", all waters of the commonwealth within the rise and fall of the tide and the marine limits of the jurisdiction of the commonwealth, but not waters within or above any fishway or dam nor waters above any tidal bound established by the department of environmental quality engineering in streams flowing into the sea.

"Commissioner", the commissioner of fisheries, wildlife and recreational vehicles.

"Dealer", any person who commercially handles fish, game birds or game mammals protected by this chapter.

"Department", the department of fisheries, wildlife and recreational vehicles.

"Deputy", any deputy natural resource officer appointed under section six of chapter twenty-one.

"Director", the director of fisheries and wildlife.

"Division", the division of fisheries and wildlife.

"Falcon", the female peregrine, but applied generally to the females of all long-winged hawks (Falconidae), and to all hawks trained to hunt game.

"Falconry", the sport of hunting game with trained raptors.

"Fish", an aquatic vertebrate animal of the osteichthyes class commonly known as finny fish, found in the inland waters.

The verb "to fish" in all of its moods and tenses, to take or attempt to take fish by any method or means, whether or not such method or means results in their capture; and said verb also includes every attempt to take and every act of assistance to any other person in taking or attempting to take fish, except operating a boat or assisting a person licensed under this chapter by cutting holes in the ice for ice fishing.

"Fur buyer", a person who deals in raw furs.

"Game", any wild bird or mammal commonly hunted for food or sport.

"Great pond", a natural pond the area of which is twenty acres or more.

"Green pelt", a pelt which has not been dried, cured or tanned.

"Hook", any lure or device designed to take not more than one fish at a time.

"Horned pout", all fish in the family Ictaluridae.

The verb "to hunt", in all of its moods and tenses, includes pursuing, shooting, killing and capturing mammals and birds and all lesser acts such as disturbing, harrying or worrying, or placing, setting, drawing or using any device commonly used to take mammals and birds, whether or not such acts result in taking; and includes every attempt to take and every act of assistance to any other person in taking or attempting to take mammals and birds.

"Inland waters", all waters within the jurisdiction of the commonwealth other than coastal waters.

"Loaded shotgun or rifle", any shotgun or rifle having a shell or cartridge in either the magazine or chamber thereof, or, in the case of a muzzle loading shotgun or rifle, containing powder in the flash pan, a percussion cap and shot or ball.

"Mammals", wild or undomesticated mammals.

"Marine fisheries", all fisheries in coastal waters.

"Natural resource officer", an enforcement officer appointed under section six of chapter twenty-one or a natural resource officer appointed under section thirty of chapter five hundred and twenty-four of the acts of nineteen hundred and sixty-four.

"Open season", the time during which fish, birds and mammals may lawfully be taken.

"Propagator", a person who propagates fish, birds or mammals.

"Raptors", all birds found in the wild that are members of the order Falconiformes or Strigiformes, and specifically but not by way of limitation, falcons, hawks, owls and eagles.

"Taxidermist", a person who prepares, stuffs, mounts or preserves fish, birds or mammals.

"Trap", any device capable of taking, catching or holding a mammal or bird, whether in the set or unset position.

The verb "to trap", in all of its moods and tenses, includes any act of staking out, setting, using, tending, placing, maintaining or picking up a trap where furbearing mammals or birds might be found.

"Warden", any fish and game warden referred to in section three of chapter four hundred and thirteen of the acts of nineteen hundred and thirty-seven.

"Woodlands", any land bearing wood growth, wood, weeds, grass or other growth likely to be burned over.

Whoever knowingly counsels, aids or assists in a violation of any provision of this chapter, or of any rule or regulation made thereunder, or knowingly shares in any of the proceeds of said violation by receiving or possessing either fish, birds or mammals, shall be deemed to have incurred the penalties imposed upon the person guilty of such violation.

Whenever the taking of fish, birds or mammals is allowed by law, reference is had to taking by lawful means and in lawful manner.

Unless the context otherwise requires, any reference to the taking or having in possession of a fish, bird or mammal shall include the taking or having in possession of any part or portion thereof.

The provisions of this chapter and regulations made thereunder, unless otherwise specifically provided, shall apply only to fish and fisheries in or taken from the inland waters of the commonwealth.

In construing this chapter, the provisions thereof forbidding possession of various species of fish, birds and mammals during certain periods of the year, shall not be held to prohibit a resident of the commonwealth who has lawfully taken, killed or come into possession of such fish, birds or mammals from having the dead bodies or carcasses thereof in possession for his own personal use and not for sale, unless prohibited by federal legislation or regulation so to do, but the burden shall be on him to prove that such possession was lawful in its origin; nor shall they be held to prohibit a person from bringing into this commonwealth the dead bodies or carcasses of fish, birds or mammals which were lawfully taken or killed in another state, province or country, or from having such fish, birds or mammals in possession for the aforesaid purpose after the arrival thereof in the commonwealth, unless, in either event, prohibited by federal legislation or regulation so to do, if before any such fish, birds or mammals are so imported they are tagged or marked in accordance with the laws of such other state, province or country and with the federal laws relative to interstate commerce, and if no more such fish, birds or mammals are imported at one time than is permitted by the laws of such other state, province or country to be exported therefrom; but the burden shall be on such person to prove that such possession was lawful in its origin.

Added by St.1967, c. 802, § 1. Amended by St.1973, c. 496, §§ 1, 2; St.1975, c. 162; St.1975, c. 706, § 221.

§ 25A. Quarantine of diseased fish, birds, mammals, etc.; order or notice; procedures; liability for expenses

If the director, upon examination of any fish, bird, mammal, reptile or amphibian held in possession either by persons licensed or required to be licensed under the provisions of section twenty-three, except dealers licensed both under clause (4) of section twenty-three and section thirty-nine A of chapter one hundred and twenty-nine, or persons exempted from being licensed in accordance with the provisions of sections four, twenty-three and twenty-nine, suspects, or has reason to believe, that such fish, bird, mammal, reptile or amphibian is afflicted with a contagious or infectious disease or parasite, he may immediately cause it to be quarantined or isolated for a period of at least ten days upon the premises of the owner or of the person in whose charge it is found or in such other place as he may designate, and he shall take such other sanitary measures as may be necessary to prevent the spread of such disease or parasite. He shall also deliver to the owner or person in charge of such fish, bird, mammal, reptile, or amphibian, or to any person having an interest therein, a written order or notice of quarantine signed by him and in such form as the director shall prescribe. Such order or notice of quarantine shall set forth conditions for which any fish, bird, mammal, reptile or amphibian shall be quarantined, including but not limited to restrictions on maintenance, propagation, cultivation, sale or transportation thereof.

Such order or notice of quarantine shall be served by the director or his appointed designee, by delivery in hand to, or leaving at the last and usual place of abode of, the owner or person having an interest in or in charge of the fish, bird, mammal, reptile or amphibian concerned, or by posting upon the premises where said fish, bird, mammal, reptile or amphibian is quarantined or isolated. A copy thereof, with the attestation of said director or his appointed designee thereon that such service has been made, shall be competent evidence in any court that such quarantine has been imposed. If any fish, bird, mammal, reptile or amphibian has been so quarantined, it shall remain in quarantine until the further order of the director.

If any fish, bird, mammal, reptile or amphibian has been quarantined or isolated upon the premises of the owner or of the person in possession of them at the time such quarantine is imposed, the expense thereof shall be paid by such owner or person and the commonwealth shall not be liable for expenses incurred, nor for cancellation of orders or losses of income or any other losses attributable to the effects of the quarantine.

Added by St.1974, c. 667.

§ 25B. Destruction and disposal of diseased fish, birds, mammals, etc., under quarantine

If the director, by examination of a case of contagious or infectious disease or parasite of any fish, bird, mammal, reptile or amphibian, has imposed a quarantine as provided in section twenty-five A, and is of the opinion that the public good so requires or that the protection of the fish, bird, mammal, reptile or amphibian resources of the commonwealth is necessary or that the interest of other propagators are jeopardized, he may cause such fish, bird, mammal, reptile or amphibian to be destroyed without liability. An order for destroying shall be issued in writing by the director, shall be directed to the owner or to any person having an interest therein or to the person in charge of such fish, bird, mammal, reptile or amphibian and shall contain such direction as to the examination and disposal of the carcass and the cleansing and disinfection of the premises where such fish, bird, mammal, reptile or amphibian was condemned as the director considers expedient. Destruction and disposal of any such fish, bird, mammal, reptile or amphibian shall be in a manner as determined by the director and shall be conducted under the direct supervision of the director or his appointed designee.

Added by St.1974, c. 667.

§ 25C. Fish, birds, mammals, etc., under quarantine deemed diseased; prohibited acts; penalties

Any fish, bird, mammal, reptile or amphibian which has been quarantined or isolated by order or notice of the director as authorized by section twenty-five A, shall, during the continuance of such quarantine or isolation, be deemed to be afflicted with a contagious or infectious disease or parasite. Whoever knowingly breaks or authorizes or causes to be broken a quarantine so imposed or whoever, contrary to such order or notice of quarantine or isolation, knowingly removes any fish, bird, mammal, reptile or amphibian or authorizes or causes it to be removed from a building, place or enclosure where it is quarantined or isolated, or whoever, contrary to an order or notice of quarantine, knowingly places or causes or authorizes to be placed any other fish, bird, mammal, reptile or amphibian within a building, place or enclosure, where any fish, bird, mammal, reptile or amphibian is quarantined, or in contact therewith, or whoever knowingly conceals, sells, removes or transports, or knowingly causes or authorizes to be concealed, sold, removed or transported, any fish, bird, mammal, reptile or amphibian, knowing or having reasonable cause to believe that it is afflicted with a contagious or infectious disease or parasite, or whoever knowingly authorizes or permits such fish, bird, mammal, reptile or amphibian to go at large or be released to the wilds within the commonwealth, or whoever knowingly brings or authorizes or permits to be brought from another country, state, district or territory into the commonwealth, any fish, bird, mammal, reptile or amphibian which is afflicted with or has been exposed to a contagious or infectious disease or parasite, shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1974, c. 667.

§ 40. Removal, fill, dredging or altering of land bordering waters; definitions; procedures; enforcement; exceptions; penalties

No person shall remove, fill, dredge or alter any bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services, without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Said notice shall be filed by delivery in hand to the conservation commission or its authorized representative or by certified mail, return receipt requested, to said commission, or, if none, to the board of selectmen in a town or the mayor of a city in which the proposed activity is to be located. Upon such filing, the receipt of such notice shall be acknowledged in writing on the face thereof and shall include the time and date so received. A person delivering said notice by hand shall be given a receipt in writing acknowledging the time and date of such filing. Each such notice shall be accompanied by a filing fee of twenty-five dollars payable to the city or town. Copies of such notice shall be sent at the same time by certified mail to the department of environmental quality engineering. No such notice shall be sent before all permits, variances, and approvals required by local by-law with respect to the proposed activity, which are obtainable at the time of such notice, have been obtained, except that such notice may be sent, at the option of the applicant, after the filing of an application or applications for said permits, variances, and approvals; provided, that such notice shall include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the environment. Upon receipt of any notice hereunder the department of environmental quality engineering, hereinafter called the department, shall designate a file number for such notice and shall send a notification of such number to the person giving notice to the conservation commission, selectmen or mayor to whom the notice was given. Said notification shall state the name of the owner of the land upon which the proposed work is to be done and the location of said land.

Within twenty-one days of the receipt by a conservation commission of a written request made by any person and sent by certified mail, said commission shall make a written determination as to whether this section is applicable to any land or work thereon. When such person is other than the owner, notice of any such determination shall also be sent to the owner.

The term "applicant" as used in this section shall mean the person giving notice of intention to remove, fill, dredge or alter.

The term "person" as used in this section shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.

The term "bogs" as used in this section shall mean areas where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or groups of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa, Calopogon, Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraccae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).

The term "coastal wetlands", as used in this section, shall mean any bank, marsh, swamp, meadow, flat or other lowland subject to tidal action or coastal storm flowage.

The term "freshwater wetlands", as used in this section, shall mean wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

The term "swamps", as used in this section, shall mean areas where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. viscosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), button bush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), white Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), highbush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), cowslip (*Caltha palustris*), poison sumac (*Toxicodendron vernix*), red maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spicebush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepper bush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

The term "wet meadows", as used in this section where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Gramincae*), loosestrife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

The term "marshes", as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (*Araceae*), bladder worts (*Utricularia*), bur reeds (*Sparganiaceae*), button bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), eelgrass (*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Eriocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*) water milfoil (*Halcragaceae*), water lilies (*Nymphaeaceae)*, water starworts (*Callitrichaceae*), water willow (*Decodon verticillatus*).

The conservation commission, selectmen or mayor receiving notice under this section shall hold a public hearing on the proposed activity within twenty-one days of the receipt of said notice. Notice of the time and place of said hearing shall be given by the hearing authority at the expense of the applicant, not less than five days prior to such hearing, by publication in a newspaper of general circulation in the city or town where the activity is proposed and by mailing a notice to the applicant and to the board of health and the planning board of said city or town. The conservation commission and its agents, officers and employees and the commissioner of environmental quality engineering and his agents and employees, may enter upon privately owned land for the purpose of performing their duties under this section.

If after said hearing the conservation commission, selectmen or mayor, as the case may be, determine that the area on which the proposed work is to be done is significant to public or private water supply, to the ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, or to the protection of fisheries, such conservation commission, board of selectmen or mayor shall by written order within twenty-one days of such hearing impose such conditions as will contribute to the protection of the interests described herein, and all work shall be done in accordance therewith. If the conservation commission, selectmen or mayor, as the case may be, make a determination that the proposed activity does not require the imposition of such conditions, the applicant shall be notified of such determination within twenty-one days after said hearing. Such order or notification shall be signed by the mayor or a majority of the conservation commission or board of selectmen, as the case may be, and a copy thereof shall be sent forthwith to the applicant and to the department.

If a conservation commission has failed to hold a hearing within the twenty-one day period as required, or if a commission, after holding such hearing has failed within twenty-one days therefrom to issue an order, or if a commission, upon a written request by any person to determine whether this section is applicable to any work, fails within twenty-one days to make said determination, or where an order does issue from said commission, the applicant, any person aggrieved by said commission's order or failure to act, or any owner of land abutting the land upon which the proposed work is to be done, or any ten residents of the city or town in which such land is located, may, by certified mail and within ten days from said commission's order or failure to act, request the department of environmental quality engineering to determine whether the area on which the proposed work is to be done is significant to public or private water supply, to the ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish or to the protection of fisheries. The commissioner of environmental quality engineering or his designee also may request such a determination within said ten days. The party making any such request shall at the same time send a copy thereof by certified mail to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder. If such party is other than the applicant, a copy of such request shall also be sent at the same time by certified mail to the applicant. Upon receipt of such request the department shall make the determination requested and shall by writen order issue within seventy days of receipt of such request, signed by the commissioner, or his designee impose such conditions as will contribute to the protection of the interests described herein; provided, however, that said department shall notify the applicant within thirty days of the receipt of such request if his application or request is not in proper form or is lacking information or documentation necessary to make the determination. Such order shall supersede the prior order of the conservation commission, board of selectmen or mayor, and all work shall be done in accordance therewith, but in no event shall any work commence until ten days have elapsed following the issuance of said order. At any time prior to a final order of determination by the department, any party requesting a determination may in writing withdraw the request, and such withdrawal shall be effective upon receipt by the department. Notwithstanding the withdrawal, the commissioner or his designee may continue the determination if he notifies all parties within ten days of receipt of the withdrawal. A copy of such order shall be sent to the applicant, to the conservation commission, board of selectmen or mayor which conducted the hearing hereunder.

No work proposed in any notice of intention shall be undertaken until the final order, determination or notification with respect to such work has been recorded in the registry of deeds, or if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies.

Within twenty-one days of the receipt of a written request, by the applicant or the owner of the property, for a certificate of compliance, the issuer of the final order shall grant such request if the activity, or portions thereof, complies with such final order. The certificate of compliance shall state that the activity, or portions thereof, has been completed in accordance with such order.

Any site where work is being done which is subject to this section shall display a sign of not less than two square feet or more than three square feet bearing the words, "Massachusetts Department of Environmental Quality Engineering File Number . . ." and the sign shall display the file number assigned to the project.

If the department of environmental quality engineering finds that any proposed work would violate the provisions of chapter ninety-one, it shall proceed immediately to enforce the provisions of said chapter.

The provisions of this section shall not apply to any mosquito control work done under the provisions of clause (36) of section five of chapter forty, of chapter two hundred and fifty-two or of any special act; to maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use; or to any project authorized by special act prior to January first, nineteen hundred and seventy-three.

The notice of intention required in the first paragraph of this section shall not apply to emergency projects necessary for the protection of the health or safety of the commonwealth which are to be performed or which are ordered to be performed by an agency of the commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the conservation commission of the city or town in which the project would be undertaken, or if none, by the mayor of said city or the selectmen of said town. If the conservation commission, mayor, or selectmen, as the case may be, fail to act favorably within twenty-four hours of receipt of a request for certification of an emergency project, said project may be so certified by the commissioner or his designee. In no case shall any removal, filling, dredging, or alteration authorized by such certification extend beyond the time necessary to abate the emergency.

Notwithstanding the provisions of section fourteen of chapter twenty-one A or any other provision of law to the contrary, the notice of intention required in the first paragraph of this section shall not apply to a maintenance dredging project for which a license has been previously issued within ten years by the division of waterways of the department of environmental quality engineering. A person intending to fill or dredge under such previously issued license shall file a written notice by certified mail to the conservation commission or if none, to the board of selectmen in a town or mayor of a city in which the land upon which such dredging project is located. Such notice shall contain the name and address of the applicant.

If the conservation commission, the board of selectmen or mayor fails to notify the applicant at the applicant's address within twenty days of the receipt of such notice of the specific objections to the commencement of such dredging fill or maintenance dredging contemplated under said license, the applicant may commence such work without any further notice to other agencies of the commonwealth. Notwithstanding failure to notify an applicant, as hereinbefore provided, the conservation commission, the board of selectmen or mayor may at any time designate an area at which spoilage from the dredging may be placed and may require the relocation of shellfish before such maintenance dredging takes place.

If the conservation commission, the board of selectmen or mayor cites specific objections to the notice of intention, such conservation commission, board of selectmen or mayor may order a hearing as provided in this section and all other pertinent provisions of this section shall apply.

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section or in violation of any order issued under this section shall forthwith comply with any such order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person. Any court having equity jurisdiction may restrain a violation of this section and enter such orders as it deems necessary to remedy such violation, upon the petition of the attorney general, the commissioner, a city or town, an owner or occupant of property which may be affected by said removal, filling, dredging or altering, or ten residents of the commonwealth under the provisions of section ten A of chapter two hundred and fourteen.

Rules and regulations shall be promulgated by the commissioner to effectuate the purposes of this section. However, failure by the commissioner to promulgate rules and regulations shall not act to suspend or invalidate the effect of this section.

Whoever violates any provision of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months or both. Each day or portion thereof of continuing violation shall constitute a separate offense. This section may be enforced by natural resources officers, deputy natural resources officers, and any officer having police powers.

Added by St.1967, c. 802, § 1. Amended by St.1968, c. 444, § 2; St.1971, c. 1020; St.1972, c. 784, § 1; St.1973, c. 163; St.1973, c. 769; St.1974, c. 818, § 1; St.1975, c. 334; St.1975, c. 363, §§ 1 to 3; St.1975, c. 706, §§ 237 to 243; St.1976, c. 53; St.1977, c. 131; St.1977, c. 601, § 1; St.1977, c. 625, § 2; St. 1978, c. 95, §§ 1, 2; St.1978, c. 119, § 7; St.1978, c. 248; St.1979, c. 122, §§ 1, 2; St.1979, c. 200; St.1979, c. 598; St.1979, c. 693.

§ 41. Protection of fisheries from discharge of waste materials into inland waters

If the director determines that any fisheries in the inland waters of the commonwealth are of sufficient value to warrant the prohibition or regulation of the discharge of any waste or other material from any source, which may, directly or indirectly, injure such fisheries, he may thereupon give written notice of such determination to the director of the division of water pollution control, who shall take appropriate action under the provisions of sections twenty-six to fifty-three, inclusive, of chapter twenty-one.

Added by St.1967, c. 802, § 1. Amended by St.1970, c. 136.

§ 42. Protection of fish in inland waters; pollution; alteration of flows or water levels; application of section; damages

A person shall not put, throw, discharge or permit to be discharged or to escape into any inland waters of the commonwealth any waste or other material, in violation of section forty or of any provisions of the Massachusetts Clean Water Act,[1] which may directly or indirectly injure or kill the fish or fish spawn therein, nor shall a person alter or manipulate or permit to be altered or manipulated the flows or water levels in any inland waters of the commonwealth to the extent that directly or indirectly injures or kills the fish or fish spawn therein, except as provided in section forty-eight.

This section shall not apply to agents or persons authorized by the director to use any method or means for the sampling, eradication or management of fish and fish habitat in the waters of the commonwealth. This section shall not prohibit the use of explosives for engineering, construction, fish sampling and public welfare purposes providing the appropriate permit therefor has been given by United States, state or municipal government authorities. This section shall not apply to the providing of water for public water supply purposes.

Whoever, contrary to any provision of this section, except as otherwise provided in this chapter by himself or by his agent does or allows to be done any act that directly or indirectly injures or kills or causes damage to the fish or fish spawn in the inland waters of the commonwealth shall be liable in tort, in twice the amount of the damage thereby done, to the commonwealth through its division of fisheries and wildlife. The director shall establish the value of injured, killed or damaged fish or fish spawn employing current commercial values of fish. In determining the remuneration to the commonwealth for injured, killed or damaged fish or fish spawn the director may negotiate for the commonwealth a settlement of the amount of such remuneration direct with the offender. If such settlement cannot be negotiated to the satisfaction of the director, the superior court shall upon petition of the director establish the value of injured, killed or damaged fish or fish spawn, and shall require the offender to make remuneration to the commonwealth through its division of fisheries and wildlife, as required herein.

Added by St.1967, c. 802, § 1. Amended by St.1970, c. 612; St.1975, c. 706, §§ 249, 250.

[1] Chapter 21, § 26 et seq.

§ 43. Poisons

A person shall not place poison in any form whatsoever for the purpose of killing any mammal or bird except pursuant to a permit issued under the provisions of this section; provided, that this section shall not prohibit any person from placing in his orchard or in or near his dwelling house, barn or other buildings poison for the purpose of destroying rats, woodchucks or other pests of like nature, or from placing with like intent under the surface of his lands carbon disulphide in any of its forms or any other poison applied in a manner similar to that in which carbon disulphide is applied. The director is hereby authorized to make rules and regulations and, pursuant to the terms thereof, to issue permits to the owners or agents of forest plantations or orchards to place poison for the extermination of rats, mice and other pests of like nature therein and to employees of municipal, state and federal governments and to others found by the director to be qualified persons to place poison elsewhere, for the control of animals and birds, in connection with public health, wood tick suppression and control, propagation and protection of wild birds and mammals, and purposes of a similar nature, or to place poison within an area specified in such permit for the purpose of killing birds which may lawfully be killed under federal and state law and which are present in such area in such numbers as in the opinion of the director to constitute a public nuisance or endanger health or safety. Possession of the raw fur of any mammal or the dead body of any bird killed by poison, except rats, mice, woodchucks or other pests of like nature, shall be prima facie evidence that the person having such possession has violated this section unless he is an employee of the federal government or an employee of the commonwealth or a political subdivision thereof to whom a permit has been issued under the provisions of this section.

Added by St.1967, c. 802, § 1.

§ 44. Deposit of garbage, etc., on property while hunting, fishing or trapping

A person while engaged in hunting, fishing or trapping shall not deposit or cause to be deposited garbage, paper, refuse, bottles, cans, rubbish or trash of any kind or nature on any public or private property without permission of the owner, tenant or lessee of such property.

Added by St.1967, c. 802, § 1.

CHAPTER 132

FORESTRY [FORESTS AND PARKS]

Sec.

8. Entry upon land to control and suppress public nuisances.
12. Interfering with work of suppressing public nuisances.
12A. Suppression of public nuisances on land under control of commonwealth.
13. Local superintendents of insect pest control; appointment; notice of appointment; assistants.
14. Reimbursement of cities and towns by commonwealth for suppression of public nuisances; determination of financial liability; accounts and vouchers.

§ 8. Entry upon land to control and suppress public nuisances

The chief superintendent, district supervisors, district superintendents and other employees and authorized agents of the bureau of insect pest control may enter upon any land within the commonwealth, and any local superintendent appointed under section thirteen and his employees and authorized agents may enter upon any land within his city or town, in accordance with the provisions of this chapter, for the purpose of determining the existence, over-all area and degree of infestation or infection caused by the public nuisances named in section eleven, suppressing and controlling said public nuisances and affixing signs to and removing, or causing to be removed, trees and wood infected with the Dutch elm disease or used as a breeding place of the beetles which spread said disease.

Amended by St.1948, c. 660, § 5; St.1949, c. 761, § 3; St.1956, c. 657, § 2.

§ 12. Interfering with work of suppressing public nuisances

Whoever wilfully resists or obstructs the chief superintendent, any local superintendent or employee or authorized agent of any of them, while such person is engaged in suppressing any public nuisance referred to in section eleven, or knowingly fails to comply with any rule, regulation or quarantine issued by the chief superintendent and approved in writing by the commissioner, shall be punished by a fine of not more than twenty-five dollars.

Amended by St.1937, c. 415, § 4; St.1948, c. 660, § 7; St.1956, c. 657, § 5.

§ 12A. Suppression of public nuisances on land under control of commonwealth

All persons in charge of land under the control of the commonwealth, including in such terms the metropolitan district commission, shall take measures on lands within their charge to suppress the public nuisances named in section eleven, and shall use such lawful means of suppression as the chief superintendent, with the approval of the commissioner, may require, and shall carry out such requirements pursuant to the advice and direction of the chief superintendent, except that the bureau of insect pest control may, on the request of the agency in charge of said lands, carry out all the duties required by the chief superintendent in connection with control of the Dutch elm disease and the beetles which spread said disease.

Added by St.1945, c. 401. Amended by St.1948, c. 660, § 8; St.1949, c. 761, § 5; St.1956, c. 657, § 6.

§ 13. Local superintendents of insect pest control; appointment; notice of appointment; assistants

The city manager and the town manager in cities and towns having such a manager, otherwise the mayor in cities and the selectmen in towns, shall appoint for a term of three years a local superintendent of insect pest control, hereinafter called the local superintendent, for the suppression of the public nuisances named in section eleven. Said local superintendent shall be qualified by training and experience to enable him to carry out efficiently the powers and duties of his position, and shall possess a supervisory license issued under the rules and regulations of the pesticide board in the department of public health. The commissioner shall be notified in writing forthwith of the said appointment, and the name and address of said local superintendent. Said local superintendent shall, pursuant to the advice and general direction of the chief superintendent, destroy said public nuisances within his city or town, including wood infected by said Dutch elm disease or infested with the beetles which spread said disease, or likely to become so infested, except on property under the control of the commonwealth. The local superintendent may appoint such assistants as appropriations are made for by a city or town, and may designate the tree warden to assist him.

Amended by St.1935, c. 87; St.1937, c. 415, § 5; St.1948, c. 660, § 9; St. 1949, c. 761, § 6; St.1950, c. 694, § 1; St.1956, c. 657, § 7; St.1968, c. 80; St.1975, c. 706, § 256.

§ 14. Reimbursement of cities and towns by commonwealth for suppression of public nuisances; determination of financial liability; accounts and vouchers

The financial liability, referred to in section eleven, of each city and town for the suppression of public nuisances named in section eleven shall be determined annually by the commissioner, who shall notify the city manager or town manager in cities and towns having such a manager, otherwise the mayor in cities and the selectmen in towns, on or before January first of his determination. The determination of liability shall be based upon the last preceding valuation of the city or town made for the purpose of apportioning the state tax, and shall set forth an amount for the control of the Dutch elm disease and the beetles which spread said disease, and an amount for the suppression or control of the other public nuisances named in section eleven, the total of which shall not exceed in any year one fifteenth of one per cent of said valuation. In determining the said financial liability, the commissioner shall consider the degree of infestation or infection, the area involved, the location of the municipality in relation to its neighbors, the number and specie of public and private shade trees and the location and size of woodland and swampland areas therein.

Amended by St.1937, c. 415, § 6; St.1948, c. 660, § 10; St.1949, c. 761, §§ 7, 8; St.1950, c. 694, § 2; St.1951, c. 488; St.1956, c. 657, § 8.

CHAPTER 132B

MASSACHUSETTS PESTICIDE CONTROL ACT

Sec.

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§ 1. Title

This chapter shall be known and may be cited as the Massachusetts Pesticide Control Act.

Added by St.1978, c. 3, § 3.

§ 2. Definitions

Unless the context clearly requires otherwise, when used in this chapter, the following words and phrases shall have the following meanings:—

"Active ingredient", in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which prevents, destroys, repels, or mitigates any pest; in the case of a plant regulator, an ingredient which through physiological action accelerates or retards the rate of growth or rate of maturation or otherwise alters the behavior of ornamental or crop plants or the products thereof; in the case of a defoliant, an ingredient which causes the leaves or foliage to drop from a plant; and, in the case of a desiccant, an ingredient which artificially accelerates the drying of plant tissue.

"Administrator", the Administrator of the United States Environmental Protection Agency.

"Adulterated", when used with reference to a pesticide, any pesticide the strength or purity of which falls below the professed standard of purity as expressed on its labeling under which it is sold; a pesticide for which any substance has been substituted wholly or in part; or a pesticide from which any valuable constituent has been wholly or in part abstracted.

"Advisory council", a council established by regulations adopted by the department for the purposes set forth in section five.

"Agricultural commodity", a plant, or part thereof, or animal or animal product produced by a person primarily for sale, consumption, propagation, or other use by man or animals.

"Animal", all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish and shellfish.

"Certified applicator", an individual who is certified under the provisions of section ten as authorized to use or supervise the use of any pesticide which is classified by the department as being for restricted use.

"Private applicator", a certified applicator who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or if applied without compensation other than trading of personal services between producers of agricultural commodities on the land of another person.

"Commercial applicator", a certified applicator, whether or not he is a private applicator with respect to some users, who uses or supervises the use of any pesticide which is classified by the department as being for restricted use for any purpose or on any land other than as provided in the preceding paragraph.

"Licensed applicator", an individual who is licensed under the provisions of section ten as authorized to be present while pesticides classified by the department as being for restricted use are being applied under the direct supervision of a certified applicator, or to use or to be present to supervise the use on land of another for hire any pesticide classified by the department as being for general use.

"Beneficial insects", insects which, during their life cycle, are effective pollinators of plants, are parasites or predators of pests, or are otherwise beneficial.

"Board", the pesticide board, established by section three.

"Commissioner", the commissioner of food and agriculture.

"Defoliant", a substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.

"Department", the department of food and agriculture.

"Desiccant", a substance or mixture of substances intended to artificially accelerate the drying of plant tissue.

"Device", an instrument or contrivance, other than a firearm, intended to hold or dispense a pesticide and used in conjunction with a pesticide, the purpose of which is to trap, destroy, repel, or mitigate any pest or any other form of plant or animal life, other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

"Director", the pesticides program director established by section four.

"Distribution" or "Distribute", to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive.

"Environment", includes water, air, land, and all plants and man and other living animals therein, and the interrelationships which exist among these.

"Federally registered pesticide", a pesticide which is registered pursuant to FIFRA.

"FIFRA", the Federal Insecticide, Fungicide, and Rodenticide Act, Public Law 92–516, as amended.[1]

"Fungi" or "Fungus", non-chlorophyll-bearing thallophytes of a lower order than mosses and liver-worts, as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals.

"Imminent hazard" a situation in which the continued use of a pesticide would result in unreasonable adverse effects on the environment.

"Inert ingredient", an ingredient which is not active.

"Insect", a small invertebrate animal generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, moths, beetles, bugs, bees, flies, and their immature stages, and to other allied classes of anthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites; ticks, millipedes, and wood lice.

"Label", the written, printed, or graphic matter, on or attached to, the pesticide or device or any of its containers or wrappers.

"Labeling", all labels and all other written, printed or graphic matter accompanying the pesticide or device at any time, or to which reference is made on the label or in literature accompanying the pesticide or device, but shall not include publications of the United States Environmental Protection Agency, the United States Department of Agriculture, or Interior, or Health, Education and Welfare, state experiment stations, state agricultural colleges, and other similar federal or state institutions or agencies authorized by law to conduct research or disseminate information in the field of pesticides, except as otherwise provided by regulation of the department.

"Land", land and water areas, including airspace, and structures, buildings, contrivances, and machinery appurtenant thereto or situated thereon, fixed or mobile.

"Licensed pesticide dealer", a person who distributes pesticides classified by the department as being for restricted use or pesticides whose uses or distribution are further restricted by regulations adopted by the department, with the approval of the board.

"Misbranded", (*a*) in the case of a pesticide or device, if the labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular; (*b*) in the case of a pesticide or device, if it is an imitation of, or is offered for sale under the name of, another pesticide or device; (*c*) in the case of a pesticide or device, if any word, statement, or other information required by or under authority of FIFRA or this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared with other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; (*d*) in the case of a pesticide, if it is contained in a package or other container or wrapping which does not conform to standards established pursuant to FIFRA or this chapter; (*e*) in the case of a pesticide, if it does not contain a label bearing the registration number assigned under FIFRA to each establishment in which it was produced; (*f*) in the case of a pesticide, if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (*g*) in the case of a pesticide, if its label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under FIFRA or this chapter, is adequate to protect health and the environment; (*h*) in the case of a pesticide, if its label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, which is presented or displaced under customary conditions or purchase, except that a pesticide is not misbranded if the administrator has permitted the ingredient statement to be placed on another part of the container pursuan to FIFRA; (*i*) in the case of a pesticide, if its labeling does not contain a statement of the use classification under which it is registered; (*j*) in the case of a pesticide, if there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing the name and address of the producer, registrant, or person for whom the pesticide is produced; the name, brand, or trademark under which the pesticide is distributed; the net weight or measure of the content, as required by the administrator; and the registration number assigned to the pesticide by said administrator pursuant to FIFRA; (*k*) in the case of a pesticide containing any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by FIFRA or this chapter the skull and crossbones; the word "POISON" prominently in red on a background of distinctly contrasting color; and a statement of practical treatment, first aid or otherwise, in case of poisoning by the pesticide; and (*l*) in the case of a pesticide, if its container does not bear a label, as required by the department pursuant to this chapter.

"Nematode", invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts. Nematodes may also be referred to as nemas or eel-worms.

"Person", an individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or its political subdivisions, administrative agencies, public or quasi-public corporation or body, or any other legal entity or its legal representative, agent or assign, or a group of persons.

"Pest", an insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or other micro-organism, except viruses, bacteria or other micro-organisms on or in living man or other living animal, which is declared to be a pest by the administrator or by the department with the approval of the board.

"Pesticide", a substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; provided that the term "Pesticide" shall not include any article that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. s. 321(w),[2] or that has been determined by the Secretary of the United States Department of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or that is an animal feed within the meaning of section 201(x) of such act (21 U.S.C. s 321(x)).[3]

"Plant regulator", a substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term "plant regulator" shall not include any nutrient mixtures or soil amendments commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted package concentration.

"Produce", to manufacture, prepare, compound, propagate, process or repackage any pesticide or device.

"Producer", a person who manufactures, prepares, compounds, propagates, processes or repackages any pesticide or device.

"Protect health and the environment" or "protection of health and environment", protection against any unreasonable adverse effects on the environment.

"Registrant", a person who has registered any pesticide pursuant to the provisions of this chapter.

"Under the direct supervision of a certified applicator", unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, and who is responsible for the pesticide applications made by that person, even though such certified applicator is not physically present at the time and place the pesticide is applied.

"Unreasonable adverse effects on the environment", an unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide.

"Weed", a plant which grows where not wanted.

"Wildlife", vertebrate animals, excluding man, that are wild by nature, including fish, birds, mammals, reptiles and amphibians.

Added by St.1978, c. 3, § 3.

[1] 7 U.S.C.A. § 135 et seq.
[2] 21 U.S.C.A. § 321(w).
[3] 21 U.S.C.A. § 321(x).

§ 3. Pesticide board

There shall be within the department of food and agriculture a pesticide board which shall consist of the commissioner of environmental quality engineering or his designee, the commissioner of food and agriculture or his designee, the director of the division of food and drugs or his designee, the commissioner of fisheries, wildlife and recreational vehicles or his designee, the commissioner of environmental management or his designee, the commissioner of public health or his designee, and seven persons appointed by the governor one of whom shall have been engaged in the commercial production of a plant-related agricultural commodity for at least the preceding five years on land owned or rented by him, one of whom shall have been an active commercial applicator of pesticides for at least the preceding five years, one of whom shall have expertise in the health effects of pesticide use, one of whom shall be a physician, one of whom shall be experienced in the conservation and protection of the environment, and two of whom shall represent the public at large. The commissioner of food and agriculture or his designee shall be chairman of the board.

The appointive members of the board shall receive fifty dollars for each day or portion thereof spent in the discharge of their official duties and shall be reimbursed for their necessary expenses incurred in the discharge of their official duties. Each appointive member shall be appointed for a term of four years, except for persons appointed to fill vacancies who shall serve for the unexpired term. Any member shall be eligible for reappointment.

The board shall hold an annual meeting in March, and regularly at three other times annually, and from time to time at the call of the chairman or upon the request of any two members.

Seven members of the board shall constitute a quorum. The board may, by vote of a majority of its members then in office, adopt rules and regulations for the conduct of its business. Rules and regulations adopted may be amended or repealed by a two-thirds vote of its members.

The board in addition to other powers conferred in this chapter shall advise the commissioner of food and agriculture with respect to the implementation and administration of this chapter.

The pesticides program director established by section four shall attend meetings of the board, shall serve as secretary thereto, but shall have no vote in its deliberation.

Added by St.1978, c. 3, § 3.

§ 3A. Pesticide board subcommittee

A subcommittee of the pesticide board shall be established and shall be charged with the responsibility of registering all pesticides for use in the commonwealth pursuant to section seven. Said subcommittee shall also be responsible for issuing all experimental use permits pursuant to section eight. Said subcommittee shall consist of five members, the director of the division of food and drugs, who shall act as chairman, the commissioner of the department of food and agriculture or his designee, the commissioner of the department of environmental management or his designee, the commissioner of public health or his designee, and one person appointed by the governor, who shall have been actively engaged in commercial application of pesticides for at least the preceding five years who shall be a member of the pesticide board. Any person aggrieved by the decision of said subcommittee may appeal any such decision according to the provisions of section thirteen.

Added by St.1978, c. 3, § 3.

§ 4. Programs director

The pesticide regulatory functions conferred upon the department under the provisions of this chapter shall be under the administrative supervision of a pesticide programs director who shall be qualified by training and experience to perform such duties. Said director shall be appointed by the commissioner with the approval of the board for a term of five years. Said person shall be eligible for reappointment, but may be removed by the commissioner for cause. The position of director shall not be subject to the provisions of chapter thirty-one or the provisions of section nine A of chapter thirty. If an employee serving in a position which is classified under chapter thirty-one or in which he has tenure by reason of section nine A of chapter thirty shall be appointed director, he shall upon termination of his service as director be restored to the position which he held immediately prior to such appointment or to a position equivalent thereto in salary grade in the same state department; provided, however, that his service in such unclassified position shall be determined by the civil service commission in administering chapter thirty-one. Such restoration shall be made without impairment of his civil service status or tenure under section nine A of chapter thirty and without loss of seniority, retirement, or other rights to which uninterrupted service in such prior position would have entitled him. During the period of such appointment, the person so appointed from a position in the classified service shall be eligible to take any competitive promotional examination for which he would otherwise have been eligible.

Added by St.1978, c. 3, § 3.

§ 5. Powers and duties of department

The department with the approval of the board may cooperate and enter into cooperative agreements and contracts with appropriate federal agencies, the agencies of other states, interstate agencies, other agencies of the commonwealth or its political subdivisions, or private or nonprofit organizations in matters related to the purposes of this chapter or FIFRA, and may receive from and dispense to such agencies such funds as may be available for the purposes of this chapter and FIFRA.

The department with the approval of the board shall take all action necessary or appropriate to secure for the commonwealth the benefits of FIFRA and other pertinent federal legislation.

The department with the approval of the board and subject to the provisions of chapter thirty A may from time to time adopt, amend or repeal such forms, regulations and standards as it deems necessary for the implementation and administration of this chapter.

The department with the approval of the board shall by regulation establish and formulate procedures whereby the advice or relevant advisory councils shall be sought incident to the development of policy or the adoption, amendment or repeal of regulations related to the administration of this chapter.

The department may with the approval of the board declare such pests and devices as it deems necessary to be subject to the provisions of this chapter.

Added by St.1978, c. 3, § 3.

§ 6. Prohibited distributions, etc.

No person shall distribute a pesticide not registered pursuant to the provisions of section seven. This prohibition shall not apply to the transfer of a pesticide from one plant or warehouse to another plant or warehouse and used solely at such plant or warehouse as a constituent part to make a pesticide which is or will be registered pursuant to the provisions of this act; or the distribution of a pesticide pursuant to the provisions of an experimental use permit issued under section eight.

No person shall distribute a pesticide classified by the department as being for restricted use to a person not appropriately certified to use that pesticide. This prohibition shall not apply to the distribution of a pesticide to a competent individual acting under the direct supervision of an individual appropriately certified to use that pesticide.

No person shall distribute a pesticide that is adulterated or misbranded or a device that is misbranded.

No person shall distribute any pesticide unless it is in the registrant's or the producer's unbroken, unopened, and sealed container. This prohibition shall not apply to the repackaging of pesticides because of damage in transit.

No person shall distribute any pesticide that does not conform to any requirement of its registration or permit.

No person shall distribute any pesticide in containers that are unsafe due to damage or design.

No person shall detach, alter, deface, or destroy, wholly or in part, any label or labeling provided for in this chapter or in regulations adopted thereunder, or to add any substance to, or take any substance from, a pesticide in a manner that may defeat the purposes of this chapter or regulations adopted thereunder.

No person shall distribute, handle, dispose of, discard, or store any pesticide or pesticide container in such a manner as to cause injury to humans, vegetation, crops, livestock, wildlife, beneficial insects, to cause damage to the environment, or to pollute or contaminate any water supply, waterway, groundwater or waterbody.

No person shall act in the capacity of, or advertise as, or assume to act as a licensed pesticide dealer unless that person is in possession of a currently valid license issued by the department pursuant to the provisions of section nine. No person possessing a pesticide dealer license shall violate or allow to be violated any term, condition, restriction or provision of said license.

No person shall purchase or use a pesticide that is not registered by the department under the provisions of section seven; provided, however, that this prohibition shall not apply to the use of a pesticide consistent with the terms of an experimental use permit issued by the department under the provisions of section eight.

Added by St.1978, c. 3, § 3.

§ 6A. Prohibited activities

No person shall use a registered pesticide in a manner that is inconsistent with its labeling or other restrictions imposed by the department. No person shall use a pesticide which is the subject of an experimental use permit inconsistently with the terms and conditions of said permit.

No individual certified or licensed as a pesticide applicator shall violate any provision, condition, term or restriction of his certification or license.

No person shall use a pesticide that has been classified by the department as being for restricted use unless he is an appropriately certified private applicator, an appropriately certified commercial applicator, or a competent individual acting under the direct supervision of an appropriately certified applicator.

Added by St.1978, c. 3, § 3.

§ 7. Registration

Pesticides, including pesticides that are federally registered may be registered by the subcommittee of the pesticide board for use in the commonwealth.

Each applicant for the registration of a pesticide shall annually file with the subcommittee an application providing thereon such information as said subcommittee shall require. Said subcommittee may require of applicants for pesticide registrations any information that it deems necessary to determine whether, or how, the pesticide should be registered.

An applicant desiring to register or reregister a pesticide shall pay such registration fee, not to exceed twenty-five dollars, as said subcommittee may by regulation require. All pesticide registrations shall be for a period not to exceed one year.

In the event that any person files with said subcommittee an application to reregister a pesticide which is registered on the date of application for reregistration and pays the appropriate fee therewith, such registration shall be deemed to be in effect until the earlier of the following two events shall occur, ninety days have elapsed after the registration was scheduled to expire, or the subcommittee notifies the applicant for reregistration that the registration has been renewed, modified or denied.

If said subcommittee determines that a pesticide, when used in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, it may classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, as being for general use.

If said subcommittee determines that a pesticide, when used in accordance with its directions for use, warnings and cautions and for the use for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may cause, without additional restrictions, unreasonable adverse effects on the environment, including injury to the applicator, it may classify the pesticide or the particular use or uses to which the determination applies, for restricted use.

Said subcommittee shall register a pesticide if it determines that its composition is such as to warrant the proposed claims for it; its labeling and other material required to be submitted comply with the requirements of this chapter; it will perform its intended function without unreasonable adverse effects on the environment; and when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

As part of the registration of a pesticide, said subcommittee may require that the pesticide be colored or discolored if such requirement is necessary for the protection of health or the environment, may classify for restricted use any pesticide or pesticide use classified for general use under FIFRA, and may include in the registration such conditions of use as it deems necessary.

If at any time it appears that a pesticide registration does not comply with the provisions of FIFRA, this chapter, or rules and regulations promulgated thereunder, or when used as registered, or a pesticide may cause unreasonable adverse effects on the environment, or a registered pesticide is an imminent hazard, the subcommittee as established in section three A, may, forthwith by an order suspend the registration of such pesticide. Notification of such order shall be sent to the applicant and shall be a public record.

Added by St.1978, c. 3, § 3.

§ 8. Experimental use permits

Any person may apply to the subcommittee for an experimental use permit for a pesticide. Each applicant for an experimental use permit shall file with the department an application providing thereon such information as the department may require. Each applicant for an experimental use permit shall pay such registration fee, not to exceed twenty-five dollars, as the department may by regulation require.

The subcommittee may grant an experimental use permit to an applicant therefor if it determines that the applicant needs such a permit to accumulate information necessary to register a pesticide.

The subcommittee shall refuse to grant an experimental use permit if it believes that the pesticide applications to be made under the proposed terms and conditions may cause unreasonable adverse effects on the environment, or if it believes that the applicant or person to conduct the experimentation is not competent to conduct such experimentation without causing unreasonable adverse effects on the environment.

The subcommittee shall revoke any experimental use permit, at any time, if it believes that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable effects on the environment.

Added by St.1978, c. 3, § 3.

§ 9. Dealers' licenses

A person may apply to the department to be a licensed pesticide dealer. Said applicants shall submit to the department a statement supplying such information thereon as the department may require. An applicant for such a license shall pay such registration fee, not to exceed twenty-five dollars, as the department may by regulation require, for each principal distribution center, branch outlet, or direct sales representative of an out-of-state distributor.

In the event that any person files with the department an application to renew a pesticide dealer's license which is in effect on the date of application for renewal and pays the appropriate fee therewith, such license shall be deemed to be in effect until the earlier of the following two events shall occur: ninety days have elapsed after the license was scheduled to expire; or the department notifies the applicant for renewal that the license has been renewed, modified or denied.

The department shall grant a pesticide dealer's license for a term not to exceed one year. The department shall grant such licenses subject to such terms, conditions and restrictions as it deems necessary or appropriate.

The department shall refuse to grant a pesticide dealer's license if it finds that the proposed distributor or his agent has acted in a manner inconsistent with the purposes for requirements of this chapter or FIFRA.

The department shall revoke any pesticide dealer's license, at any time, if it finds that its terms, conditions or restrictions are being violated or are inadequate to avoid unreasonable adverse effects on the environment.

As part of its determination to refuse to grant, or to revoke, a pesticide dealer's license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a pesticide dealer's license. In the event that the department has specified a period for nonapplication, the department may later, at its discretion, shorten or waive such period.

Added by St.1978, c. 3, § 3.

§ 10. Certificates and licenses; issuance, suspension and revocation

Certifications and licenses to use pesticides may be issued to individuals by the department in accordance with the provisions, standards and procedures contained in and established pursuant to this chapter. Each certification and license issued pursuant to this section shall be valid only for the individual to whom it is issued, may not be transferred, and shall not continue in force and effect after the death of the individual to whom it is issued. All certifications and licenses shall be for a period not to exceed one year, unless sooner revoked or suspended.

The department may authorize individuals to use pesticides in classifications as a certified commercial applicator, a certified private applicator, and a licensed applicator.

The department may establish such categories and subcategories as it deems necessary to restrict or condition the scope of pesticide use permitted within each classification. The department may establish such standards and criteria, take such action and impose such requirements as it deems necessary to determine or redetermine levels of competence and experience to qualify for each classification and each category and subcategory thereof.

Each applicant for a certification or license shall annually file with the department an application providing thereon such information as the department may require.

Each applicant desiring to be certified or licensed shall annually pay such application fee, not to exceed twenty dollars, as the department may by regulation require.

In the event that any individual files with the department an application to renew a certification or license which is in effect on the date of the application for renewal and pays the appropriate fee therewith, such certification or license shall be deemed to be in effect until the earlier of the following two events shall occur: ninety days have elapsed after the certification or license was scheduled to expire; or the department notifies the applicant that the certification or license has been renewed, modified or denied.

The department may issue a certification or license to an applicant therefor if it determines that the applicant satisfies the criteria established for that certification or license and the category or subcategory for which the certification or license is sought. The department may thus issue a certification or license subject to such terms, conditions, restrictions and requirements as it deems necessary. The department may require that an applicant for a certification or license has obtained and maintains in effect a contract of liability insurance conforming to regulations established by the department.

The department shall prior to issuing a certificate or license evaluate each applicant to determine his competence with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered or to be covered by said individual's certification or license. Said evaluation shall include such examinations as the department may require. Examinations may be taken only upon payment of a fee, not to exceed ten dollars for each examination given, as the department may require by regulation approved by the board.

The department may revoke, suspend, cancel or deny any certification or license, or any class thereof, at any time, if it believes: that the terms or conditions thereof are being violated or are inadequate to avoid unreasonable adverse effects on the environment, or that the holder of or applicant for the certification or license has violated any provision of this chapter or FIFRA or any regulation, standard, order, license, certification or permit issued thereunder or that the holder or applicant for said certification or license is not competent with respect to the use and handling of pesticides, or to the use and handling of the pesticides or class of pesticides covered by said individual's certification or license. Any person whose certification or license is suspended or revoked hereunder shall also be subject to such other punishment, penalties, sanctions or liabilities as may be provided by law. As part of its determination to refuse to grant, to revoke, or to suspend a certification or license the department may specify a period, not to exceed two years, within which the applicant may not reapply for a certification or license. In the event that the department has refused to issue or has revoked or suspended such a certification or license, and has specified a period for non-application, the department may later, at its discretion, shorten or waive such period.

The department may, at its discretion, appropriately license or certify any person possessing a valid certification or license, or equivalent rating, issued by the pesticide control agency of any other state or the federal government whose standards for the issuance of such rating are not less stringent than those of the department, provided that the pesticide control agency of that state extends similar privileges to persons so licensed or certified by the commonwealth. Any person so licensed or certified shall be subject to the annual fee requirements of this section.

Added by St.1978, c. 3, § 3.

§ 11. Protection of health and environment; regulations

The department shall by regulation establish such restrictions and prohibitions upon the disposal and storage of pesticides, packages and containers of pesticides, and materials used in the testing or application of pesticides as it deems necessary to protect health and the environment.

Added by St.1978, c. 3, § 3.

§ 12. Departmental orders; hazards; adverse environmental effects; violations

Whenever it appears to the department that there is an imminent hazard, or a potential threat of unreasonable adverse effect on the environment, or a violation or a potential violation of any provision of this chapter or of any license, certification, permit, order, registration or regulation issued or adopted thereunder, the department may issue to such persons as it deems necessary an order requiring the production of samples and records, or an order imposing restraints on or requiring such action, as it deems necessary. Issuance of an order under this section shall not preclude and shall not be deemed an election to forego any action to recover for damages to interests of the commonwealth or, under section fourteen of this act, for civil penalties or for criminal fines and penalties.

Added by St.1978, c. 3, § 3.

§ 13. Adjudicatory hearings

Any person aggrieved by a determination by the department to register or not to register a pesticide, to suspend a pesticide registration, to issue, not issue or revoke an experimental use permit, to issue, deny, revoke or suspend any certification or license, or to issue an order, made under the provisions of this chapter, may request an adjudicatory hearing before the board under the provisions of chapter thirty A. Said determination shall contain a notice of a right to request a hearing and may specify a time limit, not to exceed twenty-one days, within which said persons may request a hearing before the board under the provisions of said chapter thirty A. If no such request is timely made, the determination shall be deemed assented to. If a timely request is received, the board shall within a reasonable time hold a hearing and comply with the provisions of said chapter thirty A. In hearings so held the board shall designate a hearing officer to preside over the hearing, to assemble an official record thereof, and to render a tentative decision as provided in paragraph (7) of section eleven of said chapter thirty A. The board shall make the final decision on the basis of the official record and tentative decision so rendered.

If, in making a determination which under the provisions of the preceding paragraph may be the subject of an adjudicatory hearing, the department finds that an imminent hazard or an unreasonable adverse effect on the environment could result pending the conclusion of the adjudicatory hearing requested thereon, the department may order that the determination shall become provisionally effective and enforceable immediately upon issuance, and shall remain so notwithstanding and until the conclusion of any adjudicatory hearing procedures timely requested. In the event that the department has thus made a determination provisionally effective, it may later, at its discretion, shorten the duration of or waive such order.

As part of a final decision in an adjudicatory proceeding held under the provisions of this section, the board may specify a reasonable time period within which the matter may be barred from further proceedings before the department or the board. In the event that the board has so specified a time period, the board may later, at its discretion, shorten or waive such period.

A person aggrieved by a final adjudicatory determination of the board may obtain judicial review thereof pursuant to the provisions of chapter thirty A.

Added by St.1978, c. 3, § 3.

§ 14. Violations; penalties; injunctions

Any person who violates any provision of section six shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or both, for each such violation, knowingly committed or shall be subject to a civil penalty not to exceed five hundred dollars for each such violation which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

Any person who violates any provision of section six A or who violates any valid regulation adopted under the provisions of this chapter shall be punished by a fine of not more than one hundred dollars, or imprisonment for not more than six months, or both, for the second and each subsequent offense, knowingly committed or shall be subject to a civil penalty not to exceed fifty dollars for any offense, which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

Any person who violates any order issued under the provisions of this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment for not more than one year, or both, for each violation knowingly committed, or shall be subject to a civil penalty not to exceed twenty-five hundred dollars for each violation which may be assessed in an action brought on behalf of the commonwealth in any court of competent jurisdiction. Each day of violation shall constitute a separate offense.

The superior court shall have jurisdiction to enjoin violations of, or grant such relief as it deems necessary or appropriate to secure compliance with, any provision of this chapter or the terms of an order, license, certification, registration, permit or regulation issued or adopted thereunder.

Added by St.1978, c. 3, § 3.

§ 15. Departmental personnel, agents and inspectors; powers; evidence; confidential information

For the purpose of administering the provisions of this chapter, personnel or agents of the department and its inspectors shall have access and entry at reasonable times to any premises pursuant to a search warrant duly issued by a court of competent jurisdiction, provided that no sample of a pesticide obtained in the course of such inspection and no result of any analysis or test of any such sample shall be received in evidence in any criminal proceeding under this chapter unless the sample shall have been taken and the analysis or test conducted by a chemist in the agricultural extension service of the University of Massachusetts authorized by the department. Personnel or agents of the department may take such samples as are reasonably necessary to accomplish the purpose of their investigation and inspection. Any information relating to secret processes, methods of manufacture, production or use obtained in the course of such inspection shall be kept confidential upon request, when not required to be disclosed incident to the enforcement of this chapter. This section shall not be construed to abrogate any of the powers and duties, as defined by general or special law or common law, of any agency or political subdivision of the commonwealth.

Added by St.1978, c. 3, § 3.

TITLE XX

PUBLIC SAFETY AND GOOD ORDER

CHAPTER 138

ALCOHOLIC LIQUORS

Sec.
1. Definitions.

DILUTION OF ALCOHOLIC BEVERAGES

16. Dilution, changing or tampering with alcoholic beverages; suspension of license; prima facie evidence.

SALE OF ALCOHOLIC BEVERAGES TO CHURCHES, SCHOOLS, HOSPITALS, ETC.

28. Sale of alcoholic beverages to churches, religious societies, hospitals, homes for aged people and to manufacturers of food products.

DRUGGISTS

29. Use and sale of alcoholic beverages by registered pharmacists; prescriptions; prescription books; sales in original sealed packages.

ANALYSIS OF ALCOHOLIC BEVERAGES

36. Analysis of alcoholic beverages by department of public health.
37. Certificate accompanying sample of beverages to be analyzed; contents; form.
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39. Tampering with samples of alcoholic beverages.
40. Analysis of alcoholic beverages by court order; fee.

§ 1. Definitions

The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:—

"Alcohol", all alcohol other than denatured alcohol or alcohol described in section three hundred and three A of chapter ninety-four.

"Alcoholic beverages", any liquid intended for human consumption as a beverage and containing one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit.

"Club", a corporation chartered for any purpose described in section two of chapter one hundred and eighty, whether under federal or state law, including any body or association lawfully operating under a charter granted by a parent body so chartered, and including also any organization or unit mentioned in clause twelfth of section five of chapter forty, owning, hiring, or leasing a building, or space in a building, of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members; provided, that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the members at its annual meeting, and that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives in the form of salary or other compensation, any profits from the disposition or sale of alcoholic beverages beyond the amount of such salary as may be fixed and voted annually within two months after January first in each year by the members or by its directors or other governing body and as shall in the judgment of the local licensing authorities and the commission be reasonable and proper compensation for the services of such member, officer, agent or employee. Such club shall file with the local licensing authorities and the commission annually within three months after January first in each year a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling or selling of alcoholic beverages.

"Commission", the alcoholic beverages control commission established under section forty-three of chapter six.

"Farmer-winery", any plant or premise where wine is produced, rectified, blended or fortified from fruits, flowers, herbs or vegetables.

"Hotel", a building or part of a building owned or leased and operated by a person holding a duly issued and valid license as an innholder, under the provisions of chapter one hundred and forty and provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for its guests, including travelers and strangers and its other patrons and customers, and in addition meeting and complying with all the requirements imposed upon innholders under said chapter one hundred and forty.

"Licensing authorities", the commission or the local licensing authorities, or both, as the case may be.

"Local licensing authorities", the licensing boards and commissions established in any city or town under special statute or city charter or under section four or corresponding provisions of earlier laws, or, in a city having no such board or commission or having a board rendered inactive under section eight, the aldermen, or, in a town having no such board or commission, the selectmen.

"Malt beverages", all alcoholic beverages manufactured or produced by the process of brewing or fermentation of malt, with or without cereal grains or fermentable sugars, or of hops, and containing not more than twelve per cent of alcohol by weight.

"Minor", a person who has not attained eighteen years of age.

"Restaurant", space, in a suitable building, leased or rented or owned by a person holding a duly issued and valid license as a common victualler under the provisions of said chapter one hundred and forty, and provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing, cooking and serving suitable food for strangers, travelers and other patrons and customers, and in addition meeting and complying with all the requirements imposed upon common victuallers under said chapter one hundred and forty. No advertising matter, screen, curtain or other obstruction which, in the opinion of the licensing authorities, prevents a clear view of the interior of a restaurant shall be maintained in or on any window or door thereof after the said authorities have ordered the removal of such obstruction and have afforded the licensee thereof a reasonable opportunity to remove the same.

"Tavern", an establishment where alcoholic beverages may be sold, as authorized by this chapter, with or without food, to be served to and drunk by patrons in plain view of other patrons, all entrances to which shall open directly from a public way. The business conducted therein shall be open to public view from the sidewalk level and the establishment shall be properly lighted. No window facing a public way shall be obstructed by any screen or other object extending more than five feet above the level of the sidewalk on which the establishment abuts, but in no event shall any screen or obstruction prevent a clear view of the interior of said tavern.

"Winegrower", any person licensed to operate a farmer's winery under section nineteen B.

"Wines", all fermented alcoholic beverages made from fruits, flowers, herbs or vegetables and containing not more than twenty-four per cent of alcohol by volume at sixty degrees Fahrenheit, except cider containing not more than three per cent, or containing more than six per cent, of alcohol by weight at sixty degrees Fahrenheit.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 121, § 1; St.1934, c. 385, § 1; St.1935, c. 253, § 1; St.1935, c. 440, § 1; St.1936, c. 368, § 1; St.1941, c. 637, § 1; St.1968, c. 45; St.1972, c. 155, § 1; St.1973, c. 430, § 10A; St.1977, c. 929, § 1.

DILUTION OF ALCOHOLIC BEVERAGES

§ 16. Dilution, changing or tampering with alcoholic beverages; suspension of license; prima facie evidence

Any person holding a license under section twelve, thirteen, fourteen or fifteen who, directly or through any agent, employee or other person, dilutes or changes or in any manner tampers with any alcoholic beverage authorized to be sold under such license so as to change its composition or alcoholic content shall be punished by a fine of not less than two hundred nor more than five hundred dollars, and if any holder of such a license is convicted of a violation of the foregoing, his license shall forthwith be suspended, for a period of not less than six months, by the local licensing authorities which issued the same; provided, that cocktails and other mixed drinks may be prepared on premises licensed under section twelve, thirteen or fourteen.

Possession on the licensed premises by any licensee referred to in this section of any alcoholic beverage differing in composition or alcoholic content from such beverage when received from the manufacturer or wholesaler and importer from whom it was purchased, except cocktails and other mixed drinks as hereinbefore authorized, shall be prima facie evidence that the said beverage has been diluted, changed or tampered with in violation of this section.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1936, c. 368, § 3.

SALE OF ALCOHOLIC BEVERAGES TO CHURCHES, SCHOOLS, HOSPITALS, ETC.

§ 28. Sale of alcoholic beverages to churches, religious societies, hospitals, homes for aged people and to manufacturers of food products

The holder of a license under section eighteen, nineteen, nineteen B may sell those alcoholic beverages which such licensees are authorized to sell to churches and religious societies, educational institutions licensed under section fourteen, incorporated hospitals and homes for aged people whose real or personal property is exempt from taxation under the laws of the commonwealth, and to manufacturers of food products, including ice cream, for use only in connection with the manufacture of such products, and to manufacturers of drugs and chemicals for use only in the manufacture or preparation of articles mentioned in section thirty-five of chapter one hundred and twelve, in such quantities and subject to such restrictions as the commission may by regulation prescribe. The holder of such a license may also sell and deliver such beverages to any person on any federal or state military or naval reservation authorized by the commanding officer thereof to purchase and receive the same.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 112; St. 1977, c. 929, § 12.

DRUGGISTS

§ 29. Use and sale of alcoholic beverages by registered pharmacists; prescriptions; prescription books; sales in original sealed packages

A registered pharmacist in a city or town who holds a certificate of fitness under the following section, having complied with all provisions of law relative to the practice of pharmacy, irrespective of the vote of the city or town under section eleven, may use alcohol for the manufacture of United States pharmacopoeia or national formulary preparations and all medicinal preparations unfit for beverage purposes, and may sell alcohol, and, upon the prescription of a registered physician, (1) wines, (2) malt beverages, and (3) other alcoholic beverages. Each of the three foregoing classes shall be sold only on separate prescriptions and in quantity not exceeding one gallon of wines, one gallon of malt beverages and one quart of other alcoholic beverages. Every such prescription shall be dated and signed by the physician and shall contain the name of the person prescribed for.

All such prescriptions shall be retained and kept on file in a separate book by the pharmacist selling the same and shall not be refilled. Such prescription book shall be open at all times to inspection of the board of registration in pharmacy, licensing authorities and their agents and police officers. Nothing in this chapter shall disqualify a registered pharmacist from being licensed under section fifteen, provided that he sells no cooked food to be consumed on the premises; but a license issued to a registered pharmacist under said section shall be included in computing the number of licenses that may be granted in any city or town as provided in section seventeen.

Sales of alcoholic beverages hereunder shall be made only in the original sealed packages, and such beverages shall not be permitted to be drunk on the premises.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1935, c. 440, § 25; St.1956, c. 283, § 1.

ANALYSIS OF ALCOHOLIC BEVERAGES

§ 36. Analysis of alcoholic beverages by department of public health

The analyst or assistant analyst of the department of public health shall upon request make, free of charge, an analysis of all alcoholic beverages sent to it by the licensing authorities or by police officers or other officers authorized by law to make seizures of alcoholic beverages, if the department is satisfied that the analysis requested is to be used in connection with the enforcement of the laws of the commonwealth. The said department shall return to such police or other officers, as soon as may be, a certificate, signed by the analyst or assistant analyst making such analysis, of the percentage of alcohol which such samples of beverages contain, and, if the commission so requests, of the composition and quality of such beverages as shown by the samples submitted. Such certificate shall be prima facie evidence of the composition and quality of the alcoholic beverages to which it relates, and the court may take judicial notice of the signature of the analyst or the assistant analyst, and of the fact that he is such.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 385, § 17.

§ 37. Certificate accompanying sample of beverages to be analyzed; contents; form

A certificate shall accompany each sample of beverages sent for analysis by an officer to the department of public health stating by whom the beverages were seized, the date of the seizure and the name and residence of the officer who seized said beverages. Said department shall note upon said certificate the date of the receipt and the analysis of said alcoholic beverages and the percentage of the alcohol or the composition and quality of said beverages, as the case may be, as required by the preceding section. Said certificate shall be in the following form:—

SS. CITY OF (OR TOWN OF) 19 .

To the Department of Public Health.

SIRS:—I send you herewith a sample of
taken from alcoholic beverages seized by me
(date) 19 .

Ascertain the percentage of alcohol it contains or the composition and quality thereof, as the case may be, and return to me a certificate herewith upon the annexed form.

Member or Authorized Employee of the
Alcoholic Beverages Control Commission

Constable of
Police Officer of

COMMONWEALTH OF MASSACHUSETTS.
DEPARTMENT OF PUBLIC HEALTH,
BOSTON, 19 .

This is to certify that the received by this department with the above statement and analyzed by me contains per cent of alcohol or is composed of the following constituents in the following percentages and that its quality is

Received 19 .
Analysis made 19 .

DEPARTMENT OF PUBLIC HEALTH,
By ....
Analyst.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1934, c. 385, § 18.

§ 38. Forms of commission

The commission shall provide and cause officers to be supplied with a suitable number of the forms prescribed by section thirty-seven. The certificate of the department of public health, given substantially in the form hereinbefore set forth, shall be admitted as evidence on trials for the forfeiture of alcoholic beverages as to the composition and quality of the beverages to which it relates.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1941, c. 199.

§ 39. Tampering with samples of alcoholic beverages

No person shall tamper with samples of alcoholic beverages taken as provided in section sixty-three or alter the statements made upon the forms or certificates aforesaid.

Added by St.1933, Ex.Sess., c. 376, § 2.

§ 40. Analysis of alcoholic beverages by court order; fee

Any court may cause alcoholic beverages which have been seized under this chapter to be analyzed by a competent chemist, and the reasonable expense thereof, including a fee of not more than five dollars for each analysis, shall be taxed, allowed and paid like other expenses in criminal cases.

Added by St.1933, Ex.Sess., c. 376, § 2. Amended by St.1959, c. 313, § 1.

CHAPTER 139

COMMON NUISANCES

BURNT OR DANGEROUS BUILDINGS

Sec.
1. Adjudication of burnt, dilapidated or dangerous building or other structure as a nuisance; hearing; notice; service of order.

BURNT OR DANGEROUS BUILDINGS

§ 1. Adjudication of burnt, dilapidated or dangerous building or other structure as a nuisance; hearing; notice; service of order

The aldermen or selectmen in any city or town may, after written notice to the owner of a burnt, dilapidated or dangerous building or other structure, or his authorized agent, and after a hearing, make and record an order adjudging it to be a nuisance to the neighborhood, or dangerous, and prescribing its disposition, alteration or regulation. The city or town clerk shall deliver a copy of the order to an officer qualified to serve civil process, who shall forthwith serve an attested copy thereof in the manner prescribed in section one hundred and twenty-four of chapter one hundred and eleven, and make return to said clerk of his doings thereon.

Amended by St.1966, c. 195; St.1970, c. 649, § 2.

PUBLIC SAFETY AND GOOD ORDER

CHAPTER 140

LICENSES

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DEFINITION

§ 1. "Licensing authorities" defined

"Licensing authorities", as used in this chapter, unless a contrary meaning is required by the context, shall mean the boards in Boston and other cities which by special statutes or city charters have the power to issue licenses for innholders or common victuallers, licensing boards appointed under section four of chapter one hundred and thirty-eight in cities which at the municipal election next preceding the first day of January, nineteen hundred and twenty-five, voted to authorize the granting of licenses for the sale of certain non-intoxicating beverages and also in cities wherein by special statutes said boards are vested with all the powers and duties exercised by licensing boards in cities that vote to grant such licenses, the aldermen in all other cities and the selectmen in towns.

INNHOLDERS AND COMMON VICTUALLERS

§ 2. Issuance; signing; refusal; fee; record; penalty

Licensing authorities may grant licenses to persons to be innholders or common victuallers. Such license shall not be issued or be valid until it has been signed by a majority of the aldermen in cities where the license is to be granted by the aldermen, by a majority of the licensing board in other cities or by the selectmen in towns. An alderman, any member of the licensing board or a selectman may refuse to sign a license for a person who, in his opinion, has not complied with this chapter. This section shall not require the licensing authorities to grant either of said licenses if, in their opinion, the public good does not require it. A fee of not more than twenty-five dollars may be charged for either of said licenses. The licenses shall be recorded in the office of the licensing authorities. An alderman, member of a licensing board or selectman who signs a license granted contrary to this chapter shall be punished by a fine of not more than fifty dollars.

Amended by St.1974, c. 261.

§ 4. Contents generally; coverage; term

Every license of an innholder or common victualler shall specify the street and number, if any, of the building where the business is to be carried on or give some other particular description thereof, and the license shall not protect a licensee who carries on his business in any other place. Such licenses shall expire on December thirty-first of each year; but they may be granted during December, to take effect on January first following.

Amended by St.1934, c. 171, § 1.

§ 5. Food and accommodations; availability

Every innholder and every common victualler shall at all times be provided with suitable food for strangers and travelers. Every innholder shall also have upon his premises suitable rooms, with beds and bedding, for the lodging of his guests.

§ 6. Conditions precedent; proposed plans; cost estimates; licensee as victualler or innholder

A common victualler's or innholder's license may be issued to an applicant therefor if at the time of his application he has upon his premises the necessary implements and facilities for cooking, preparing and serving food for strangers and travelers, and, in the case of an applicant for an innholder's license, also has the rooms, beds and bedding required by law. An applicant for a license as a common victualler or as an innholder, proposed to be exercised upon premises which have not been equipped with fixtures or supplied with necessary implements and facilities for cooking, preparing and serving food and upon which, in the case of an applicant for an innholder's license, there are not also provided suitable rooms, beds and bedding for the lodging of his guests, shall file with the licensing authorities a plan showing the location of counters, tables, ranges, toilets and in general the proposed set-up of the premises, which shall include, in the case of an applicant for an innholder's license, a plan of the proposed suitable rooms for the lodging of his guests and a list of the beds and bedding, which he proposes to have upon said premises if and when the license may issue, together with an itemized estimate of the cost of said proposed set-up and of such fixtures, and of the implements and facilities necessary for cooking, preparing and serving food and of such beds and bedding; and thereupon the licensing authorities may grant a common victualler's or an innholder's license, as the case may be, upon the condition that such license shall issue upon the completion of the premises according to the plans and estimate submitted, and the decision of the licensing authorities as to whether or not said premises are so completed shall be final. For the purposes of section twelve of chapter one hundred and thirty-eight, a person to whom a license has been granted under this section shall be deemed to be a common victualler duly licensed under this chapter to conduct a restaurant or an innholder duly licensed thereunder to conduct a hotel, as the case may be.

Amended by St.1937, c. 424, § 6; St.1941, c. 439, § 1.

§ 9. Suspension; revocation; forfeiture

If, in the opinion of the licensing authorities, a licensee as an innholder or a common victualler ceases to be engaged in the business he is licensed to pursue, or fails to maintain upon his premises the implements and facilities required by this chapter, they shall immediately revoke his license. If a licensee at any time conducts his licensed business in an improper manner, the licensing authorities, after notice to the licensee and reasonable opportunity for a hearing, may upon satisfactory proof thereof suspend or revoke his license. An innholder who violates section seven shall forfeit his license. A licensee who is convicted a second time of the violation of any of the provisions of sections six to eighteen, inclusive, shall forfeit his license.

Amended by St.1975, c. 256, § 2.

§ 13. Posting of statutory provisions

Innholders shall post a printed copy of this and the three preceding sections in a conspicuous place in each room of their inns. Boarding house keepers shall post a copy of the preceding section in a conspicuous place in each room of their boarding houses.

§ 20. Unlicensed innholders or victuallers

Whoever assumes to be an innholder or common victualler without being licensed as such under this chapter shall forfeit one hundred dollars.

SALE OF CERTAIN NON–INTOXICATING BEVERAGES

§ 21A. City and town licenses

Cities and towns may provide by ordinance or by-law for the licensing of persons to keep open their places of business for the retail sale of beverages derived wholly or in part from cereals or substitutes therefor and containing less than one-half of one per cent of alcohol, unfermented grape juice, ginger ale, root beer, sarsaparilla, pop, artificial mineral waters, carbonated waters or beverages, natural fruit juices, and other so-called soft drinks, and may fix the fee for said licenses within the limit hereinafter provided, except that in cities having licensing boards the authority to provide for the licensing of such persons and the fixing of fees therefor shall be vested in said licensing boards. For the purposes of this section, the term retail sale shall mean the providing of a beverage as herein defined to a patron in or by a licensed premise in exchange for something of value by means of an in-person exchange or by means of a vending machine exchange or by means of a cover charge, so-called, which gives the patron the right to obtain drinks without additional payment.

Amended by St.1979, c. 358, § 1.

§ 21C. Violations; penalties; injunctions

Whoever not being licensed as aforesaid keeps open his place of business for the retail sale of any such beverage shall be punished by a fine of fifty dollars for each day of violation, and whoever commits a second such offense shall be punished by a fine of one hundred dollars for each day of violation; and whoever commits a third such offense shall be punished by a fine of one thousand dollars for each day of violation; and whoever commits a fourth or subsequent such offense shall be punished by a fine of five thousand dollars for each day of violation. In addition to any criminal penalty, herein provided, the attorney general or district attorney for the district or the city or town may petition the superior court department of the trial court to enjoin any violation of chapter twenty-one A to twenty-one D, inclusive.

Amended by St.1979, c. 358, § 2.

§ 21D. Inapplicability of statute to certain persons

The provisions of the three preceding sections shall not apply to innholders, common victuallers, druggists, nor to dealers whose principal business is the sale of groceries and meats or either of said products, nor to the sale of any or all of such beverages when sold not to be drunk on the premises.

ORGANIZATIONS DISPENSING FOOD OR BEVERAGES TO MEMBERS AND GUESTS

§ 21E. Grant of license; governing statutes; names of officers and members; suspension; revocation; excepted organizations

Licensing authorities may grant a license to any club, society, association or other organization, whether incorporated or unincorporated, authorizing it to dispense food and beverages to be consumed on its premises, to its stockholders or members and their guests, but to no others; provided, that the licensing authorities are satisfied that such organization is a proper one to which to grant such a license. Such licenses and the granting thereof shall be subject to the provisions of sections two and four, except that compliance with the provisions of law relative to innholders or common victuallers shall not be required as a condition of obtaining such license. If such organization is unincorporated, the names of all the officers and members shall be submitted with the application for the license, and shall be kept available for public inspection. Section two hundred and one shall apply to the premises of any organization subject to this section. If any such organization at any time exercises in an improper manner the authority conferred upon it by such license the licensing authorities, after notice to the licensee and reasonable opportunity for a hearing, may upon satisfactory proof thereof suspend or revoke the license. The provisions of this and the following section shall not apply to literary, benevolent, charitable, scientific or religious corporations or religious organizations or associations whose real or personal property is exempt from taxation, nor to any club so long as it is licensed under section twelve of chapter one hundred and thirty-eight to sell alcoholic beverages, as defined in section one of said chapter one hundred and thirty-eight, nor to any recognized veteran or fraternal organization.

Added by St.1933, c. 284. Amended by St.1934, c. 328, § 16.

§ 21F. Unlicensed organization; officer or employee dispensing food or beverage

Any officer or employee of any such organization who dispenses or causes to be dispensed any food or beverage on its premises, unless such organization is then licensed under section twenty-one E, shall be punished by a fine of not more than one hundred dollars for the first or second offence and by such fine and imprisonment for not more than three months for each subsequent offence. If any officer or employee of any such organization which is incorporated is convicted of any offence under this section, the selectmen, or the aldermen, in the place where such organization is situated, except Boston, and in Boston the police commissioner, shall immediately give notice to the state secretary, who, upon receipt thereof, shall declare the charter of such organization void, and shall publish a notice in at least one newspaper published in the county where such organization is located that such incorporation is void and of no further effect.

Added by St.1933, c. 284.

LODGING HOUSES

§ 22. Definition

"Lodging house", as used in sections twenty-two to thirty-one, inclusive, shall mean a house where lodgings are let to four or more persons not within the second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section seventy-one of chapter one hundred and eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the commonwealth.

Amended by St.1960, c. 740; St.1965, c. 171; St.1973, c. 481.

§ 22A. Cooking facilities

Notwithstanding any provision of law or any regulation, ordinance or by-law to the contrary, a lodging house where lodgings are let to more than five but less then twenty persons may furnish individual cooking facilities for the preparation, serving, eating and storage of food; provided that no such facility shall be furnished in a room having an area of less than one hundred fifty square feet. Such facilities shall, in a single room, consist of a gas or electric plate, a refrigerator and hot and cold running water and in a unit consisting of two adjoining rooms shall consist of a gas or electric range, a sink with hot and cold running water, a refrigerator and storage area for food. Any facilities furnished under this section shall comply with the building code applicable thereto. This section shall apply only to cities and towns which accept its provisions.

Added by St.1970, c. 859, § 1.

§ 23. Term; fee

Licensing authorities may grant licenses for lodging houses which shall be for the period provided in section four, and shall charge for each license such fee, not exceeding twenty dollars, as the city council or selectmen may establish, otherwise the same shall be granted without charge.

Amended by St.1952, c. 577; St.1974, c. 70.

§ 24. Unlicensed keeper

Whoever conducts a lodging house without a license shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment for not more than three months, or both.

§ 25. Inspection of premises

Premises occupied, used or controlled by a licensee under sections twenty-two to thirty-one, inclusive, or under an innholder's license shall be subject to inspection by the licensing authorities and their authorized agents, and by the police on request from the licensing authorities.

§ 30. Revocation and suspension of license; investigation; hearing; notice

A license issued under sections twenty-two to thirty-one, inclusive, or an innholder's license, shall be revoked if at any time the licensing authorities are satisfied that the licensee is unfit to hold the license. They may suspend and make inoperative, for such period of time as they may deem proper, the licenses mentioned herein for any cause deemed satisfactory to them. The revocation and suspension shall not be made until after investigation and a hearing, or after giving the licensee an opportunity to be heard; notice of the hearing shall be left at the premises of the licensee not less than three days before the time therefor.

§ 31. Posting of notice of statutes

All innholders, and all lodging house keepers who have been ordered to keep a register, shall post in a conspicuous place near the register a notice, to be furnished by the licensing authorities, containing the provisions of sections twenty-seven and twenty-nine relating to the entry of names and residences in the register, together with the penalty provided for their violation.

§ 32. Convictions; transmission of copy of record to licensing authorities

The clerk of a court where any person is convicted of a violation of any provision of sections twenty-two to thirty-one, inclusive, shall forthwith send a copy of the record of the conviction to the licensing authorities in the town where the offence occurred.

RECREATIONAL CAMPS, OVERNIGHT CAMPS OR CABINS, MOTELS AND MOBILE HOME PARKS

§ 32A. Necessity of license; motel defined

No person shall conduct, control, manage or operate, directly or indirectly, any recreational camp, overnight camp or cabin, motel or mobile home park unless he is the holder of a license granted under the following section. The term "motel", as used in section twenty-seven, in this section, and in sections thirty-two B to thirty-two E, inclusive, shall be construed to mean any building or group of buildings which provide sleeping accommodations for transient motorists and which is not licensed as an inn.

Added by St.1939, c. 416. Amended by St.1950, c. 326, § 3; St.1954, c. 134, § 3; St.1964, c. 592, § 3; St.1965, c. 426.

§ 32B. Grant, suspension or revocation; expiration; renewal; fees; inspection; reinstatement

The board of health of any city or town, in each instance after a hearing, reasonable notice of which shall have been published once in a newspaper published in such city or town, may grant, and may suspend or revoke, licenses for recreational camps, overnight camps or cabins, motels or mobile home parks located within such city or town, which license, unless previously suspended or revoked, shall expire on December thirty-first in the year of issue, but may be renewed annually upon application without such notice and hearing. The fee for each original or renewal license shall be ten dollars. Such board of health shall at once notify the department of environmental quality engineering of the granting or renewal of such a license, and said department shall have jurisdiction to inspect the premises so licensed to determine that the sources of water supply and the works for the disposition of the sewage of such premises are sanitary. If upon inspection of such premises said department finds the sources of water supply to be polluted or the works for the disposition of the sewage to be insanitary, or both of such conditions, said department shall forthwith notify such board of health and such licensee to that effect by registered mail and said board shall forthwith prohibit the use of any water supply found by said department to be polluted. Unless such licensee shall, within thirty days following the giving of such notice, correct the conditions at such premises to the satisfaction of both said department and such board the license so granted shall be suspended or revoked by such board. Any license so suspended may be reinstated by such board when the conditions at such premises, as to sources of water supply and works for the disposition of sewage, are satisfactory to said department and such board. The board of health of a city or town may adopt, and from time to time alter or amend, rules and regulations to enforce this section in such city or town.

Added by St.1939, c. 416. Amended by St.1941, c. 396; St.1945, c. 153; St. 1950, c. 326, § 4; St.1950, c. 802, § 1; St.1954, c. 134, § 4; St.1964, c. 592, § 4; St.1970, c. 296; St.1975, c. 706, § 280.

§ 32C. Examination of licensed camps and cabins; unsanitary conditions

Every board of health shall from time to time examine all camps, motels, mobile home parks and cabins licensed by it under authority of section thirty-two B, and if, upon such examination, such camp, motel, mobile home park or cabin is found to be in an unsanitary condition, said board of health may, after notice and a hearing, suspend or revoke the license.

Added by St.1939, c. 416. Amended by St.1950, c. 326, § 5; St.1954, c. 134, § 5; St.1964, c. 592, § 5.

§ 32D. Rules and regulations; posting

Whoever conducts, controls, manages or operates any camp, motel, mobile home park or cabin licensed under section thirty-two B shall post in a conspicuous place near the entrance to every such camp, motel, mobile home park or cabin a copy of the rules and regulations adopted thereunder, as most recently altered or amended.

Added by St.1939, c. 416. Amended by St.1950, c. 326, § 6; St.1954, c. 134, § 6; St.1964, c. 592, § 6.

§ 32E. Operating business without license

Whoever conducts, controls, manages or operates any camp, motel, mobile home park or cabin subject to section thirty-two A to thirty-two C, inclusive, which is not licensed under section thirty-two B, shall be punished by a fine of not less than ten nor more than one hundred dollars.

Added by St.1939, c. 416. Amended by St.1950, c. 326, § 7; St.1954, c. 134, § 7; St.1964, c. 592, § 7.

MOBILE HOME PARKS

§ 32F. Definition; license requirement; copy sent to city or town clerk; exceptions

Any lot or tract of land upon which three or more mobile homes occupied for dwelling purposes are located, including any buildings, structures, fixtures and equipment used in connection with mobile homes shall be defined a mobile home park. No lot or tract of land may be used for a mobile home park unless the owner or occupant thereof is the holder of a license granted under section thirty-two B. The board of health of a city or town shall, forthwith upon granting an original or renewal license under section thirty-two B for a mobile home park, send a copy of such license to the city or town clerk.

A lot or tract of land provided by a state or county fair, agricultural and horticultural society, grange or 4-H club for the use of mobile homes to accommodate personnel who are to participate in any fair or exhibition conducted by such organization, which fair or exhibition does not continue for a period exceeding ten consecutive days, or a lot or tract of land provided by a college or university for the use of mobile homes to accommodate students lacking dormitory facilities shall not be deemed a mobile home park.

Added by St.1950, c. 326, § 8. Amended by St.1950, c. 802, § 2; St.1951, c. 74; St.1955, c. 623; St.1956, c. 162, § 1; St.1964, c. 592, § 9.

§ 32G. Monthly fees; collection; deposit; lists; payment to treasurers; exemption from taxes; penalties; revocation of license

In addition to the license fee provided for under section thirty-two B, each mobile home park owner or operator licensed under said section shall, except as hereinafter provided, pay an additional license fee of six dollars per month or major fraction thereof, on account of each mobile home, occupying space within such mobile home park; provided, however, that in a city by vote of the city council and in a town by vote of the board of selectmen the amount of such additional license fee may be increased to an amount not exceeding twelve dollars per month. Such additional license fee shall, except as hereinafter provided, be collected by such mobile home park operator from the owner or occupant of each mobile home occupying space in such mobile home park at the end of each month or any major fraction thereof, and shall be deposited with the collector of taxes in the city or town in which the mobile home park is located not later than the tenth day of the month next following. The mobile home park operator shall, not later than the fifth day of each month, file with the licensing authority a list containing the amounts collected together with the name and address of each owner or occupant of a mobile home occupying space during the preceding month, and designating the mobile homes and the owners or occupants thereof on account of which no additional license fee is to be collected or deposited under the provisions of the last paragraph of this section. The licensing authority shall forthwith commit the list to the collector of taxes in the city or town in which the mobile home park is located for collection. Such a collector shall in the collection of such accounts have all the remedies provided by sections thirty-five, thirty-six and ninety-three of chapter sixty for the collection of taxes, on personal property. The collector of taxes shall once in each week or oftener, pay over to the city or town treasurer all money received by him during the preceding week or lesser period on account of such license fees. Each mobile home subject to the license fee provided for in this section shall be exempt from any property tax as provided in clause Thirty-sixth of section five of chapter fifty-nine.

The collector of taxes shall report to the licensing authority any failure to deposit with him any license fee so collected, and any failure by a mobile park operator to collect any license fee provided for under this section or to deposit with the collector of taxes any license fee so collected shall be deemed cause for the revocation of any license granted under section thirty-two B. In addition, any wilful failure to deposit with the collector of taxes a license fee which has been so collected shall be punishable by a fine of not less than ten nor more than one hundred dollars for each fee so collected and not deposited.

No additional license fee imposed by this section shall be collected by the operator of a mobile home park, nor shall any such fee be required to be deposited with the collector of taxes in the city or town in which such park is located, on account of a mobile home which is deemed, by section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940,[1] as amended, not to be located or present in or to have a situs in such city or town for the purposes of taxation in respect to personal property.

Added by St.1950, c. 326, § 8. Amended by St.1950, c. 802, § 3; St.1952, c. 583, § 1; St.1954, c. 410; St.1964, c. 592, § 10; St.1966, c. 104; St.1968, c. 464, §§ 2, 3; St.1972, c. 470.

[1] 50 U.S.C.A. App. § 574.

§ 32H. Unequipped park; plans; cost estimate; filing; conditional license; suspension; revocation

An applicant for a license under section thirty-two B for a mobile home park which has not been equipped with the buildings, structures, fixtures and facilities necessary to conduct a mobile home park, shall file with the board a plan showing the buildings, structures, fixtures and facilities, and in general the proposed set-up which he plans to have upon said premises if and when the license may issue, together with an itemized estimate of the cost of the same, and thereupon the board, with the approval of the state department of environmental quality engineering, shall grant a mobile home park license upon the condition that such license shall issue upon the completion of the premises according to the plans and estimate submitted, providing that the proposed mobile home park will be in compliance with all applicable laws, ordinances, rules and regulations. Such conditional license may be suspended or revoked in accordance with the provisions of section thirty-two B.

Added by St.1950, c. 326, § 8. Amended by St.1964, c. 592, § 11; St.1975, c. 706, § 281.

§ 32*I*. Register; retention; inspection; penalty

Every holder of a license for a mobile home park shall keep or cause to be kept, in permanent form, a register in which shall be recorded the true name or name in ordinary use, address and registration of each owner and occupant of a mobile home or motor vehicle renting space at such park, the date of entering and the date of leaving of said mobile home or motor vehicle. Such register shall be retained by the holder of the license for a period of at least one year after the date of the last entry, and shall be open to the inspection of the licensing authorities, their agents, and the police. Whoever wilfully and knowingly violates any provision of this section shall be punished by a fine of not less than five dollars nor more than one hundred dollars.

Added by St.1950, c. 326, § 8. Amended by St.1964, c. 592, § 12.

§ 32J. Possession of mobile home space without right; termination of tenancy at will or lease; summary process to recover possession

If the mobile home owner or person holding under him holds possession of a mobile home space in a mobile home park without right, after the determination of a tenancy or other estate at will or lease as provided in this section, the licensee entitled to the mobile home space may recover possession thereof by summary process.

Any tenancy or other estate at will or lease in a mobile home park, however created, and including any existing contract for occupancy of a mobile home space in a mobile home park, may be terminated by the licensee entitled to the mobile home space or his agent only for one or more of the following reasons:

(1) nonpayment of rent.

(2) substantial violation of any enforceable rule of the mobile home park.

(3) violation of any laws or ordinances which protect the health or safety of other mobile home park residents.

(4) a discontinuance in good faith by the licensee, of the use of part or all of the land owned by the licensee as a mobile home park subject to any existing contractual rights or agreements between the licensee and the tenants located in the mobile home park. No such discontinuance shall be valid for any mobile home sold by the licensee and for which a mobile home site was made available at the time of the said sale, by the licensee, for a period of five years from the date of said sale.

No action shall be maintained under this section unless:

(1) the mobile home park licensee has given at least thirty days' written notice, delivered by certified or registered mail, stating the reason or reasons for termination and notifying the mobile home park resident that he has fifteen days from the date of the mailing of the notice in which to pay the overdue rent, or cure the substantial violation of the park rule or rules or of the law or ordinance, in order to avoid eviction;

(2) the mobile home resident has not paid the overdue rent or cured said violation or violations within twenty days from the day on which such written notice was received; and

(3) such action, other than for nonpayment of rent, is brought within thirty days from the date of the last alleged violation; provided, however, that an action may be maintained under this section without further notice or opportunity to cure, if the same substantial violation of rules, other than nonpayment of rent, occurs within six months from the date on which such notice was delivered.

Added by St.1950, c. 326, § 8. Amended by St.1964, c. 592, § 13; St. 1973, c. 1007, § 1; St.1975, c. 692.

§ 32K. Appeals; reinstatement; reissuance

Any person aggrieved by any act, rule, order or decision of the licensing board, may appeal to the superior court. After suspension or revocation the license may be reinstated or reissued if the conditions leading to suspension or revocation have been remedied and the park is being maintained and operated in full compliance with law.

Added by St.1950, c. 326, § 8.

§ 32L. Requirements and restrictions applicable to mobile home parks

The following requirements and restrictions shall apply to all mobile home parks:

1. A mobile home park licensee may promulgate rules governing the rental or occupancy of a mobile home lot but no such rule shall be unreasonable, unfair, or unconscionable.

2. Any rule or change in rent which does not apply uniformly to all mobile home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair.

3. A mobile home park licensee, directly or indirectly engaged in the business of selling mobile homes, who has sold a number of mobile homes equal to the number of spaces in a mobile home park, shall not then impose any conditions of rental or occupancy which restricts the mobile home owner in his choice of mobile home dealer nor shall a mobile home park licensee impose any conditions of rental or occupancy which restrict the mobile home owner in his choice of a seller of fuel, furnishings, goods, services, or accessories connected with the rental or occupancy of a mobile home lot, unless such conditions are necessary to protect the health, safety, or welfare of mobile home residents in the park. Said licensee may also impose reasonable conditions relating to central fuel and gas meter systems in the park, providing the charges for such goods or services shall not exceed the average prevailing price in the locality for similar goods and services.

3A. No mobile home park owner shall refuse to allow the transfer of a mobile home located in said park on the ground that such mobile home park owner has not sold as many mobile homes as there are spaces.

4. A mobile home park licensee shall not impose by any rule or condition of occupancy any fee, charge, or commission for the sale of a mobile home located in a mobile home park. The licensee may, however, upon the proposed sale of such a home, contract with the mobile home owner to sell the home for a fee not to exceed ten per cent of the sale price of such home.

5. If any mobile home park licensee adds, changes, deletes or amends any rule governing the rental or occupancy of a mobile home lot in a mobile home park, a new copy of all such rules shall be furnished to all mobile home park residents in such park, and filed with the department of the attorney general and the secretary of communities and development at least forty-five days prior to the effective date of such addition, change, deletion, or amendment. The new copy shall be signed by both the mobile home park owner and the mobile home park resident.

6. Any rule or condition of occupancy which is unfair and deceptive or which does not conform to the requirements of this section shall be unenforceable.

7. Failure to comply with the provisions of this section shall constitute an unfair and deceptive trade practice under the provisions of section two (*a*) of chapter ninety-three A.

Added by St.1973, c. 1007, § 2. Amended by St.1974, c. 277, § 1.

§ 32M. Sale or proposed sale of mobile home located in licensed park; refusal of entrance to purchaser prohibited; unfair trade practice

Upon the sale or proposed sale of a mobile home located on a lot in a mobile home park and which is not owned by the mobile home park licensee, the prospective purchaser and members of his household may not be refused entrance if they meet the current rules of the park.

Failure to comply with the provisions of this section shall constitute an unfair and deceptive trade practice under the provisions of section two (*a*) of chapter ninety-three A.

Added by St.1973, c. 1007, § 2.

§ 32N. Violations of sections 32L and 32M or building or health codes; reporting by park residents; reprisals by licensee; remedy; notice of termination of tenancy as presumption

Any mobile home park licensee or his agent who threatens to or takes reprisals against any mobile home park resident for reporting a violation or suspected violation of section thirty-two L or section thirty-two M or any applicable building or health code to the board of health of a city or town in which the mobile home park is located, the department of public health, the department of the attorney general or any other appropriate government agency, shall be liable for damages which shall not be less than one month's rent or more than five months' rent, or the actual damages sustained by the mobile home park resident, whichever is greater, and the costs of the court action brought for said damages including reasonable attorney's fees. The receipt of any notice of termination of tenancy by such mobile home park resident, except for nonpayment of rent, within six months after making such a report of a violation or suspected violation shall create a rebuttable presumption that such notice is a reprisal against the mobile home park resident for making such report and said presumption may be pleaded in defense to any eviction proceeding against such mobile home park resident brought within a year after such report.

Added by St.1973, c. 1007, § 2.

§ 32O. Judgment, decree, etc. in action to enforce sections 32L to 32M; copies to attorney general and local board of health

In any action to enforce the provisions of section thirty-two L or section thirty-two M, the clerk of the court shall mail copies of any judgment, decree, permanent injunction, or order of the court upon the entry thereof to the attorney general and to the board of health of the city or town in which the mobile home park of the licensee is located.

Added by St.1973, c. 1007, § 2.

§ 32P. Terms and conditions of occupancy; disclosure in writing; required notice

All terms and conditions of occupancy must be fully disclosed in writing by the mobile home park owner to any prospective mobile home park resident at a reasonable time prior to the rental or occupancy of a mobile home lot. Said disclosures shall include, but shall not be limited to, the amount of rent, an itemized list of any charges or fees, the names and addresses of all the owners of the mobile home park, and the rules and regulations governing the use of the mobile home lot and park. Said writing shall be signed by both the mobile home park owner and the mobile home park resident and contain the following notice printed verbatim in a clear and conspicuous manner:

IMPORTANT NOTICE REQUIRED BY LAW

The rules set forth below govern the terms of your lease of occupancy arrangement with this mobile home park. The law requires all of these rules and regulations to be fair and reasonable, else said rules and regulations cannot be enforced against you.

You may continue to stay in the park as long as you pay your rent and abide by the rules and regulations of the park. You may only be evicted for nonpayment of rent, violation of laws, or for a substantial violation of the rules and regulations of the park. In addition, no eviction proceedings may be commenced against you until you have received notice by certified mail of the reason for the eviction proceeding and have been given fifteen days from the date of the notice in which to pay the overdue rent or to cease and desist from any substantial violation of the rules and regulations of the park. However, only one notice of a substantial violation of the rules and regulations of the park is required to be sent to you during any six month period. If a second or additional violation occurs, except for nonpayment of rent, within six months from the date of the first notice then eviction proceedings may be commenced against you immediately.

If this park requires you to deal exclusively with a certain fuel dealer or other merchant for goods or services in connection with the use or occupancy of your mobile home lot, the price you pay for such goods or services may not be more than the prevailing price in this locality for similar goods and services.

You may not be evicted for reporting any violations of law or health and building codes to boards of health, the department of the attorney general, or any other appropriate government agency. Receipt of notice of termination of tenancy by you, except for nonpayment of rent, within six months after your making such a report shall create a rebuttable presumption that such notice is a reprisal and may be pleaded by you in defense to any eviction proceeding brought within one year.

This law is enforceable by the consumer protection division of the department of the attorney general.

Added by St.1973, c. 1007, § 2.

§ 32Q. Definition of "mobile home" applicable to sections 32A to 32P

As used in sections thirty-two A to thirty-two P, inclusive, the words "mobile home" shall mean a dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or a permanent foundation for permanent living quarters.

Added by St.1973, c. 1007, § 2.

PUBLIC LODGING HOUSES

§ 33. Definition; cubicle plan

In cities of over fifty thousand inhabitants every building not licensed as an inn, in which ten or more persons are lodged free or for a charge of twenty-five cents or less for each person for a day of twenty-four hours, or for any part thereof, shall be deemed a public lodging house within the meaning of sections thirty-four to forty, inclusive. No building or part thereof erected, altered or converted to be used as such a public lodging house shall have the sleeping compartments arranged on the cubicle plan.

§ 34. Licensing authority; revocation; fee; expiration; contents; coverage

The officer or board having charge of the police in any such city may license persons to keep public lodging houses therein, and shall immediately revoke such license if the licensee violates any provision of sections thirty-five to thirty-eight, inclusive. No fee shall be charged for such license, and, subject to the state building code when applicable, it shall expire on the thirtieth day of April next after the granting of the same. Every such license shall specify the street and number, if any, of the building where the business is to be carried on or give some other particular description thereof, and the license shall not protect a licensee who carries on his business in any other place.

Amended by St.1972, c. 802, § 10.

§ 35. Certification; compliance with statutes; fire alarms, extinguishers, and means of escape; alterations; additional appliances

No such license shall be granted in any such city until the inspector of buildings thereof, or the other officer or board having authority to administer the laws and ordinances in regard to the construction of buildings therein, has certified that the building, if it has eight or more rooms or ten or more persons are accommodated above the second story, complies with the requirements of the state building code, and in other cases is provided with sufficient means of escape in case of fire, and that suitable appliances are provided for extinguishing fires and for giving alarm to the inmates in case of fire; and such officer or board may from time to time require such alterations to be made or such additional appliances to be provided as may in his or its judgment be necessary for the protection of life and property in case of fire.

Amended by St.1972, c. 802, § 11.

§ 36. Certification; water closets, urinals and ventilation; cleaning and disinfecting by licensee

No such license shall be granted in any such city until the board of health thereof has certified that the building is provided with a sufficient number of water closets and urinals and with good and sufficient means of ventilation; and the said board may from time to time require the licensee thoroughly to cleanse and disinfect all parts of said building and the furniture therein to the satisfaction of such board.

§ 37. Register; inspection

In every public lodging house a register shall be kept in which shall be entered the name and address of each lodger, together with the time of his arrival and departure, and such register shall at all times be open to the inspection of the police.

§ 38. Free access to officers

The keeper of every public lodging house shall at all times, when so required by any officer of the building department, of the health department, or of the police department, give him free access to said house or any part thereof.

§ 39. Keeping of house without license

Whoever keeps or holds himself out as keeping a public lodging house without being duly licensed as hereinbefore provided, and whoever is concerned or financially interested in any public lodging house, the keeper of which is not so licensed, shall be punished by a fine of not more than one hundred dollars.

§ 40. Violation of statutes

Any keeper of a public lodging house who violates any provision of sections thirty-five to thirty-eight, inclusive, shall be punished by a fine of one hundred dollars.

MISCELLANEOUS PROVISIONS

§ 47. Coffee and tea houses

No coffee house, so called, or tea house or place of resort for refreshment where the principal business is or purports to be the sale of coffee or tea as a beverage shall be maintained in any town which accepts this section, or has accepted corresponding provisions of earlier laws, by a vote of a city council or by vote of a town at a town meeting, until a license therefor has been granted by the licensing authorities. The fee for the license shall be five dollars or such other sum as shall be fixed from time to time by the city council or selectmen. Licenses issued hereunder shall expire on May first following the date of issue, and may be revoked at any time by the licensing authorities. Whoever violates this section shall be punished by a fine of not more than one hundred dollars.

§ 49. Lunch carts

The street commissioners and the police commissioner of Boston, the aldermen of any other city, or the selectmen of any town may, if in their opinion public convenience so requires, license any reputable person, upon the payment of an annual license fee of not less than fifty dollars, to maintain a vehicle for the sale of food in such part of any public way and during such hours as they may designate, provided that public travel is not incommoded thereby. Any such license may be revoked by them at any time.

§ 50. Lunch carts; fee of highway not owned by town

No license as aforesaid shall be granted to use any part of a highway the fee in which is not owned by the town unless the owners of the land abutting on that part of the way consent in writing to the granting of the license.

§ 51. Massage; baths

No person shall practice massage, or conduct an establishment for the giving of vapor, pool, shower or other baths for hire or reward, or advertise or hold himself out as being engaged in the business of massage or the giving of said baths without receiving a license therefor from the board of health of the town where the said occupation is to be carried on; provided, that a person registered as a barber or apprentice under the provisions of section eight-seven H or section eighty-seven I of chapter one hundred and twelve or as a hairdresser, operator, or a student under the provisions of sections eighty-seven T to eighty-seven JJ, inclusive, of said chapter one hundred and twelve may practice facial and scalp massaging without taking out a license as provided in this section. The board of health may grant the license upon such terms and conditions, and may make such rules and regulations in regard to the carrying on of the occupation so licensed, as it deems proper, and may revoke any license granted by it for such cause as it deems sufficient, and without a hearing; provided, that a person licensed to massage or to conduct an establishment for the giving of vapor, pool, shower or other baths in any town may, at the request of a physician, attend patients in any other town in the commonwealth without taking out an additional license.

Amended by St.1932, c. 275; St.1935, c. 428, § 3; St.1936, c. 55, § 1; St.1941, c. 626, § 12; St.1947, c. 253.

§ 52. Massage or baths; inspection

Members of the police department of any town may enter and inspect any premises in that town used for massage or the giving of vapor baths.

Amended by St.1935, c. 428, § 4.

§ 53. Massage or baths; penalty

Whoever violates any provision of section fifty-one, or any rule or regulation made under authority thereof, or prevents or hinders any member of a police force from exercising the authority conferred upon him by section fifty-two, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

§ 54. Junk dealers

Cities and towns by ordinance or by-law may provide for the licensing, by the police commissioner in Boston, by the license commission in Lowell, by the aldermen in other cities and by the selectmen in towns, of suitable persons to be collectors of, dealers in or keepers of shops for the purchase, sale or barter of junk, old metals or second hand articles, may make rules and regulations relative to their business, and may provide for the supervision thereof. Said licensing board or officer may, except as otherwise provided in such ordinance or by-law, make additional rules, regulations and restrictions which shall be expressed in all licenses. Said licenses may be revoked at pleasure, and shall be subject to sections two hundred and two to two hundred and five, inclusive, except that societies, associations or corporations organized solely for religious or charitable purposes and their agents shall not be required to pay a fee for such licenses.

STEAM ENGINES AND FURNACES

§ 115. Necessity of license; contents; application; record; hearing; notice; regulations

A furnace for melting iron or making glass, or a stationary steam engine for use in a mill for planing or sawing boards or turning wood or in which other fuel than coal is used to create steam, shall not be erected or put up to be used in a city or town which accepts this and sections one hundred and sixteen and one hundred and seventeen or has accepted corresponding provisions of earlier laws, unless the aldermen or selectmen thereof have granted a license therefor, prescribing the place where the building shall be erected in which the steam engine or furnace is to be used and the materials and construction thereof, and have made such regulations as to the height of flues and protection against fire as they deem necessary for the safety of the neighborhood. Such license may be granted on a written application, and shall be recorded in the city or town records. The aldermen or selectmen shall assign a time and place for a hearing upon such application, and cause at least fourteen days' public notice thereof to be given, at the expense of the applicant, in such manner as they may order.

Amended by St.1948, c. 550, § 21; St.1949, c. 297, § 7.

§ 116. Dangerous engines or furnaces; nuisance; building regulations and alterations; service of copy of order

In a town which accepts this section or has accepted corresponding provisions of earlier laws, the aldermen or the selectmen, after due notice in writing to the owner of such steam engine or furnace, except for making glass, erected or in use therein before the time of such acceptance and a hearing, may adjudge it to be dangerous or a nuisance to the neighborhood, and make and record an order prescribing such rules, restrictions and alterations as to the building in which it is constructed or used, the construction and height of its smoke flues, and such other regulations as they deem necessary for the safety of the neighborhood; and the town clerk shall deliver a copy of such order to a constable, who shall serve on the owner an attested copy thereof, and make return of his doings thereon to said clerk within three days after the delivery thereof to him.

§ 117. Appeal; injunction

An owner of a steam engine or furnace who is aggrieved by such order may have the remedy prescribed by section two of chapter one hundred and thirty-nine. The superior court, on granting the application for a jury, may issue an injunction restraining the further use of such engine or furnace until the final determination of the application.

§ 118. Stationary engines; distance from buildings

In a town which accepts this section or has accepted corresponding provisions of earlier laws, a stationary engine, propelled by steam or other motive power, shall not be erected or put up for use within five hundred feet of a dwelling house or public building unless a license therefor has been first granted and recorded in the manner provided in section one hundred and fifteen.

§ 119. Nuisances; removal

An engine or furnace erected or used contrary to section one hundred and fifteen, one hundred and sixteen or one hundred and eighteen shall be deemed a common nuisance; and the aldermen or selectmen may remove the same in the same manner as boards of health may remove nuisances under sections one hundred and twenty-three to one hundred and twenty-five, inclusive, of chapter one hundred and eleven.

DOGS

§ 136A. Definitions

The following words and phrases as used in sections one hundred and thirty-seven to one hundred and seventy-five, inclusive, unless the context otherwise requires, shall have the following meanings:

"Director", the director of the division of accounts of the department of corporations and taxation.

"Dog fund", the fees, fines and reimbursements collected in connection with the licensing of dogs and the enforcement of said sections.

"Dog officer", any officer appointed under said sections to enforce the laws relating to dogs.

"Keeper", any person, corporation or society, other than the owner, harboring or having in his possession any dog.

"Kennel", one pack or collection of dogs on a single premises, whether maintained for breeding, boarding, sale, training, hunting or other purposes and including any shop where dogs are on sale, and also including every pack or collection of more than three dogs three months old or over owned or kept by a person on a single premises irrespective of the purpose for which they are maintained.

"License period", the time between April first and the following March thirty-first, both dates inclusive.

"Live stock or fowls", animals or fowls kept or propagated by the owner for food or as a means of livelihood; also deer, elk, cottontail rabbits and northern hares, pheasants, quail, partridge and other birds and quadrupeds determined by the department of fisheries, wildlife and recreational vehicles to be wild and kept by, or under a permit from, said department in proper houses or suitable enclosed yards. Such phrase shall not include dogs, cats and other pets.

Added by St.1934, c. 320, § 1. Amended by St.1943, c. 111, § 1; St.1975, c. 706, § 283.

§ 137. Registration and license requirement; office; rabies inoculation; form; contents; collar or harness; tag

A person who at the commencement of a license period is, or who during any license period becomes, the owner or keeper of a dog three months old or over which is not duly licensed, and the owner or keeper of a dog when it becomes three months old during a license period, shall cause it to be registered, numbered, described and licensed until the end of such license period, and the owner or keeper of a dog so registered, numbered, described and licensed during any license period, in order to own or keep such dog after the beginning of the succeeding license period, shall, before the beginning thereof, cause it to be registered, numbered, described and licensed for such period. The registering, numbering, describing and licensing of a dog, if kept in Boston shall be in the office of the police commissioner or if kept in any other town in the office of the clerk thereof.

No municipal clerk or other official designated by the governing body of any municipality to license dogs shall grant any such license and official metal registration tag for any dog unless the owner thereof provides written evidence that the dog to be licensed and registered has been inoculated with an approved rabies vaccine in accordance with section one hundred and forty-five B, or has been certified exempt from such provision as hereinafter provided.

The dog licensing official may grant an exemption of the rabies inoculation requirement for (*a*) dogs which have not yet attained the age of six months, (*b*) any dog which the local board of health, for a specified period of time, declares exempt upon presentation of a veterinarian's certificate stating that because of an infirmity, other physical condition, or regimen of therapy, that inoculation is thereby deemed inadvisable, or (*c*) dogs in transit, or dogs brought into the state temporarily for the sole purpose of showing in dog shows or exhibitions.

The license shall be in a form prescribed by the director, upon a blank to be furnished, except in the county of Suffolk, by the county in which the town is located, and shall be subject to the condition expressed therein that the dog which is the subject of the license shall be controlled and restrained from killing, chasing or harassing live stock or fowls. The owner of any dog may add descriptive words, not over ten in number, upon the license form to indicate the color, breed, weight and special markings of the licensed dog. The owner or keeper of a licensed dog shall cause it to wear around its neck or body a collar or harness of leather or other suitable material, to which shall be securely attached a tag in a form prescribed by the director, and upon which shall appear the license number, the name of the town issuing such license and the year of issue. Such tags shall be furnished in the same manner as the license blanks, and if any such tag shall be lost the owner or keeper of such dog shall forthwith secure a substitute tag from the town clerk or, in Boston, from the police commissioner, at a cost of ten cents which, if received by a town clerk, shall be retained by him unless otherwise provided by law. This section shall not apply where it is otherwise provided by law, nor shall it apply to a person having a kennel license.

Amended by St.1932, c. 289, § 1; St.1934, c. 320, § 2; St.1943, c. 111, § 2; St.1945, c. 140; St.1956, c. 44, § 1; St.1956, c. 78, § 1; St.1979, c. 474, § 1.

§ 137C. Inspection of kennels; revocation, suspension and reinstatement of license; nuisance

The county commissioners, or in Boston the police commissioner, or a chief of police or a dog officer within his jurisdiction, may at any time inspect or cause to be inspected any kennel and if, in their or his judgment, the same is not being maintained in a sanitary and humane manner, or if records are not properly kept as required by law, the county commissioners, or in Boston the police commissioner, shall by order revoke or suspend, and in case of suspension may reinstate, such license. Upon the petition of twenty-five citizens, filed with the mayor of a city or the selectmen of a town, or in Boston with the police commissioner, setting forth that they are aggrieved, or annoyed to an unreasonable extent, by one or more dogs at a kennel maintained in such city or town, because of the excessive barking or vicious disposition of said dogs or other conditions connected with such kennel constituting a public nuisance, said mayor, selectmen or police commissioner, as the case may be, within seven days after the filing of such petition, shall give notice to all parties in interest of a public hearing to be held within fourteen days after the date of such notice. Within seven days after such public hearing said mayor or selectmen, in Nantucket county or in Suffolk county elsewhere than in Boston, or in Boston said police commissioner, shall make an order either revoking or suspending such kennel license or otherwise regulating said kennel, or dismissing said petition. In counties other than Nantucket or Suffolk, said mayor or selectmen within said seven days shall report in writing to the county commissioners their recommendations and within seven days after receipt of such report said county commissioners shall investigate or cause to be investigated the subject matter of such petition and shall, by order, either affirm or deny such recommendations by suspending or revoking such kennel license or otherwise regulating such kennel, or by dismissing the petition. Written notice of any order under this section revoking, suspending or reinstating a license shall be mailed forthwith to the officer issuing such license and to the holder of such license. Within ten days after such order the holder of such license may bring a petition in the district court within the judicial district of which such kennel is maintained, addressed to the justice of the court, praying that the order may be reviewed by the court, and, after such notice to the officer or officers involved as the court may deem necessary, it shall review such action, hear the witnesses and affirm such order unless it shall appear that it was made without proper cause or in bad faith, in which case such order shall be reversed. The decision of the court shall be final and conclusive upon the parties. Any person maintaining a kennel after the license therefor has been so revoked, or while such license is so suspended, shall be punished by a fine of not more than fifty dollars.

Added by St.1934, c. 320, § 3. Amended by St.1939, c. 206.

§ 145. Symptoms of rabies printed on license; description supplied by department of health

Every license issued to the owner of a dog shall have a description of the symptoms of rabies printed thereon. Such description shall be supplied by the department of public health to the director of accounts upon application therefor.

Amended by St.1932, c. 289, § 2.

§ 145A. Anti-rabic vaccine and treatment; reimbursement for cost

The board of health of a city or town shall, upon application, furnish free of charge to any resident thereof who has been exposed to rabies, or may have been so exposed, anti-rabic vaccine and anti-rabic treatment, in accordance with rules and regulations which the department of public health is hereby authorized to make. Except in Boston, such person shall have the right to select his own physician, who shall be paid by the city or town at a rate established as hereinafter provided, and the fact that a physician is a member of a board of health shall not disqualify him from being so selected and from being paid by the city or town for his services. Boards of health shall establish rates of compensation for such treatment. A city or town so furnishing vaccine and treatment shall be reimbursed for the cost thereof, not exceeding fifty dollars in the case of any one person, from the dog fund of the county in which is situated the city or town where the person treated was exposed to rabies, except that if such exposure occurred in Suffolk county such reimbursement shall be made by the city or town where such person was exposed to rabies, and except that if such vaccine and treatment are given by the board of health of a city or town because of a bite by or other exposure to rabies from a dog required to be licensed therein, the city or town shall not be so reimbursed, unless such dog is licensed at the time of such bite or other exposure. No such reimbursement shall include any part of the salary of a salaried city or town physician. The county commissioners of all counties except Suffolk, acting jointly, or the county commissioners of each county, except Suffolk, shall contract for the supplying of such vaccine to the several cities and towns on the order of their respective boards of health, and shall, from time to time, notify said boards of the terms and conditions of contracts made hereunder. No city or town for which a supply of such vaccine is provided by a contract as aforesaid shall be reimbursed hereunder for any such vaccine not purchased under such contract.

Added by St.1932, c. 289; § 3. Amended by St.1934, c. 320, § 9; St.1937, c. 375; St.1939, c. 42.

§ 145B. Vaccination against rabies; certificate; revaccination; penalty

Whoever is the owner or keeper of a dog six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian using a vaccine approved by the department of public health, and shall procure and possess said veterinarian's certificate indicating that such dog has been innoculated against rabies and setting forth the date of such inoculation and the duration of immunity. The certificate of inoculation shall be exhibited to the dog licensing official of the municipality when application for a dog license is made. Said certificate shall also be produced by any person owning or keeping a dog upon the request of any dog licensing enforcement official.

Unvaccinated dogs acquired or brought into the commonwealth shall be vaccinated within thirty days after acquisition or entry into the commonwealth or upon reaching the age of six months, whichever comes later.

Vaccinated dogs shall be revaccinated periodically in accordance with rules and regulations adopted and promulgated by the department of public health.

Whoever violates the provisions of this section shall be punished by a fine of not more than fifty dollars.

Added by St.1969, c. 207. Amended by St.1979, c. 474, § 2.

§ 157. Vicious dogs; nuisance; barking or other disturbance; annoyance to sick person

If any person shall make complaint in writing to the selectmen of a town, the chief of police of a city, or the county commissioners, that any dog owned or harbored within his or their jurisdiction is a nuisance by reason of vicious disposition or excessive barking or other disturbance, or that any such dog by such barking or other disturbance is a source of annoyance to any sick person residing in the vicinity such selectmen, chief of police or county commissioners shall investigate or cause to be investigated such complaint, including an examination on oath of the complainant, and may make such order concerning the restraint or disposal of such dog as may be deemed necessary. Within ten days after such order the owner or keeper of such dog may bring a petition in the district court within the judicial district of which the dog is owned or kept, addressed to the justice of the court, praying that the order may be reviewed by the court, or magistrate thereof, and after such notice to the officer or officers involved as the magistrate deem necessary the magistrate shall review such action, hear the witnesses and affirm such order unless it shall appear that it was made without proper cause or in bad faith, in which case such order shall be reversed. Any party shall have the right to request a de novo hearing on the petition before a justice of the court. The decision of the court shall be final and conclusive upon the parties. Any person owning or harboring such dog who shall fail to comply with any order of the selectmen, chief of police, county commissioners or district court, as the case may be shall be punished by a fine of not more than twenty-five dollars for the first offense and not more than one hundred dollars for a second or subsequent offense.

The act of a dog in attacking or biting another dog or other animal may be made the subject of a complaint under the provisions of this section.

Magistrates shall exercise their authority hereunder subject to the limitations of section sixty-two C of chapter two hundred and twenty-one.

Amended by St.1934, c. 320, § 20; St.1976, c. 530; St.1978, c. 478, § 73.

§ 167. Ordering dogs to be muzzled or restrained; killing unmuzzled or unrestrained dogs

The alderman or selectmen may order that all dogs shall be muzzled or restrained from running at large during such time as shall be prescribed by such order. After passing such order and posting a certified copy thereof in two or more public places in the town, or, if a daily newspaper is published in such town, by publishing such copy once in such newspaper, the aldermen or selectmen may issue their warrant to one or more of the police officers or constables of such town, who shall, after twenty-four hours from the publication of such notice, kill all dogs found unmuzzled or running at large contrary to such order, and shall receive such compensation therefor as is provided in section one hundred and fifty-one. Notwithstanding the foregoing, a police officer or constable may, in his discretion, hold any such dog for a period not in excess of ten days. If the owner thereof claims such dog and pays to such officer or constable the sum of five dollars, together with one dollar and fifty cents for each day that it is so held, it shall be returned to the owner. The fee of five dollars shall be paid over to the city or town and the remaining moneys shall be retained by such officer or constable as his fee.

Amended by St.1967, c. 234.

§ 168. Service of order to muzzle or restrain dogs; penalty

The aldermen or selectmen may cause service of such order to be made upon the owner or keeper of the dog by causing a certified copy thereof to be delivered to him; and if he refuses or neglects for twelve hours thereafter to muzzle or restrain such dog as so required, he shall be punished by a fine of not more than twenty-five dollars.

§ 169. Penalty on officer; report of refusal or neglect of officer to perform duties

A county, city or town officer who refuses or wilfully neglects to perform the duties imposed upon him by the provisions of this chapter relating to dogs shall be punished by a fine of not more than one hundred dollars, which shall be paid, except in Suffolk county, into the county treasury. Whoever is aggrieved by such refusal or neglect may report the same forthwith to the district attorney of his district.

§ 173. Ordinances and by-laws relating to dogs

A town may make additional ordinances or by-laws relative to the licensing and restraining of dogs, and may affix penalties of not more than ten dollars for a breach thereof; but such ordinances or by-laws shall relate only to dogs owned or kept in such town, and the annual fee required for a license under section one hundred and thirty-nine shall in no case be more than one dollar in addition to the amount required by said section.

BOATING AND BATHING

§ 194. Prohibition of business of renting of boats or bathing suits without a license

Cities and towns which accept this and the two following sections or have accepted corresponding provisions of earlier laws by a vote of the city council or of the town at a town meeting called for the purpose may prohibit any person from carrying on the business of renting boats or bathing suits, for use upon or in so much of the waters of any great pond as is situated within the town, without first obtaining a license so to do from the aldermen or selectmen.

§ 195. Posting of notices relative to statutes

The aldermen of such cities and the selectmen of such towns shall cause to be posted in the immediate vicinity of such ponds notices stating that sections one hundred and ninety-four to one hundred and ninety-six, inclusive, have been accepted by the city or town.

§ 196. Engagement in business without license

Whoever in such a city or town, without obtaining a license under section one hundred and ninety-four, if one is required, engages in the business described in said section, shall be punished by a fine of not more than ten dollars.

GENERAL PROVISIONS

§ 206. Public and semipublic outdoor inground swimming pools; enclosures; safety equipment; inspection; violations; penalty

Every public and semipublic outdoor inground swimming pool shall be enclosed by a fence six feet in height and firmly secured at ground level; provided, that any board or stockade fence or structure shall be at least five feet in height, but if over five feet in height, the fence shall be chain link. Such enclosure, including gates therein, shall not be less than six feet above the ground, and any gate shall be self-latching with latches placed four feet above the ground or otherwise made inaccessible from the outside to children up to eight years of age. Such enclosure shall be constructed of such material and maintained so as not to permit any opening in said enclosure, other than a gate, wider than three inches at any point along the enclosure. Any such pool shall be equipped with at least one life ring and a rescue hook.

Every outdoor inground swimming pool open to the public, other than a public inground swimming pool fed by a spring or stream shall be drained or covered within seven days of closing.

For the purposes of this section, "semipublic outdoor inground pool" shall mean a swimming or wading pool on the premises of, or used in connection with, a hotel, motel, trailer court, apartment house, country club, youth club, school, camp, or similar establishment where the primary purpose of the establishment is not the operation of the swimming facilities. Semipublic outdoor inground swimming pool shall also mean a pool constructed and maintained by groups for the purposes of providing bathing facilities for members and guests only.

Every public and semipublic outdoor inground swimming pool shall be inspected annually by the inspector of buildings of each city and town in which said pool is located.

Any owner or manager of such public or semipublic pool who fails to comply with the provisions of this section shall be punished by a fine of not more than one thousand dollars.

Added by St.1975, c. 397, § 1. Amended by St.1976, c. 253, § 1; St.1977, c. 223; St.1979, c. 708.

CHAPTER 140B

CONTROL OF CERTAIN JUNKYARDS

Sec.
1. Definitions.
2. Establishment or maintenance of junkyards; locations.
3. Rules and regulations.
4. Screening or relocation of junkyards.
7. Non-conforming junkyard as nuisance; abatement.
8. Violation; enforcement; penalties.

§ 1. Definitions

The following terms as used in this chapter shall, unless a different meaning clearly appears from the context, have the following meanings:

(*a*) "Junk", old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber debris, waste, or junked, dismantled, or wrecked automobiles, or parts thereof, iron, steel, and other old or scrap ferrous or nonferrous material.

(*b*) "Automobile graveyard", any establishment or place of business which is maintained, used, or operated for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor vehicle parts.

(*c*) "Junkyard", an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

(*d*) "Interstate system", that portion of the national system of interstate and defense highways located within the commonwealth, as officially designated or as may hereafter be so designated, by the state department of public works, and approved by the Secretary of Commerce, pursuant to the provisions of Title 23, United States Code.[1]

(*e*) "Primary system", that portion of connected main highways, as officially designated, or as may hereafter be so designated, by the state department of public works, and approved by the Secretary of Commerce, pursuant to the provisions of Title 23, United States Code.

(*f*) "Department", the state department of public works.

(*g*) "Commissioner", the commissioner of the state department of public works.

Added by St.1967, c. 600, § 1.

[1] 23 U.S.C.A. § 101 et seq.

§ 2. Establishment or maintenance of junkyards; locations

No person shall establish, operate or maintain a junkyard, any portion of which is within one thousand feet of the nearest edge of the right-of-way of any interstate or primary highway, unless such junkyard is:

(*a*) screened by natural objects, plantings, fences, or other appropriate means so as not to be visible from the main traveled way of the system, or otherwise removed from sight, or

(*b*) located within an area which is zoned for industrial use under authority of law, or

(*c*) located within an unzoned industrial area, which area shall be determined from actual land uses and defined by regulations promulgated by the commissioner, or

(*d*) is not visible from the main traveled way of the system.

Added by St.1967, c. 600, § 1.

§ 3. Rules and regulations

The department may promulgate such rules and regulations governing the location, planting, construction and maintenance of the screens or fences, including the materials used in screening or fencing, as may be required by this chapter.

Added by St.1967, c. 600, § 1.

§ 4. Screening or relocation of junkyards

If the department determines that the topography of the area adjoining the highway does not permit adequate screening of such junkyards or that the screening of such junkyards is not economically feasible, it may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as it deems necessary to secure the relocation, removal or disposal of the junkyards. The department shall pay the costs of such relocation, removal or disposal as approved by said department. If the department determines it to be in the best interests of the commonwealth, it may acquire by purchase or otherwise or take by eminent domain under chapter seventy-nine such land or interests in land as may be necessary to provide adequate screening of such junkyards.

Added by St.1967, c. 600, § 1.

§ 7. Non-conforming junkyard as nuisance; abatement

Any junkyard which does not conform to the requirements of this chapter shall be deemed a nuisance and the department may make application to the superior court for the county in which such junkyard is established or maintained for an injunction to abate such nuisances.

Added by St.1967, c. 600, § 1.

§ 8. Violation; enforcement; penalties

No person shall operate or maintain a junkyard in violation of the provisions of this chapter.

The state police and the police of the cities and towns shall enforce this chapter. Any person violating any provision of this chapter the punishment for which is not otherwise provided shall, upon conviction of the first offense, be punished by a fine of not less than fifty dollars nor more than one hundred dollars, or by imprisonment for not less than ten days nor more than thirty days, or both such fine and imprisonment; and shall upon conviction of a second or subsequent offense be fined not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for not less than thirty days nor more than six months, or by both such fine and imprisonment; provided, however, that any person who violates the provisions of this chapter and of section sixty-eight of chapter one hundred and forty shall be prosecuted in accordance with the provisions of said section sixty-eight and upon conviction be subject to the penalty provided in said section.

Added by St.1967, c. 600, § 1.

CHAPTER 142

SUPERVISION OF PLUMBING

Sec.

1. Definitions.
2. Application of statutes.
3. Master plumbers or gas fitters, journeymen and apprentices; licensing; advertising; display of license or certificate.
3A. Apprentices; licensing; application; employment; on-the-job training, rules and regulations.
3B. Certificates of plumbing or gas fitting corporations or partnerships.
4. Rules of examiners; qualifications of applicants; applications; examinations; issuance of license; probationary license; credit for veterans.
4A. Plumbers employed by cities, institutions or corporations; installations and repairs.
5. Fees for licenses and examinations.
6. Territorial coverage, transfer term, renewal, suspension and revocation of licenses; names of licensees forwarded to towns; registration.
7. Notice to examiners of violation of statute, ordinance or regulation.
8. Repealed.
9. Local inspectors in towns regulated by rules of examiners; appeals from decisions; decisions of examiners.
10. Inspection districts; expense.
11. Inspectors appointed from civil service list; approval of plumbing or gas fitting; exemption.
12. Additional inspectors; inspector engaging in plumbing or gas fitting work.
13. Regulations.
14. Persons learning plumbing and gas fitting businesses.
15. Reports by inspectors of buildings and boards of heath.
16. Work or employment of workers without required license; violation of statute, ordinance or regulation by persons, cities or towns.
17. Statements by manufacturer on range boilers and water heaters; certificates relative to cast iron water fronts, heater elements and hot water tanks.
18. Construction, installing, relocating and repairing requirements; capacity; strength; solder; pressure.
19. Safety devices for hot water tanks; statements by manufacturer; approval; pipes and fittings.

Sec.
20. Installed or junked range boilers.
21. Buildings used by commonwealth.
22. Enforcement and violation of statutes.

§ 1. Definitions

In this chapter the following words shall have the following meanings:

In this chapter the following words shall have the following meanings:—

"Certificate", a certificate of registration issued in accordance with section three of chapter five hundred and thirty-six of the acts of nineteen hundred and nine, section two of chapter five hundred and ninety-seven of the acts of nineteen hundred and ten or chapter five hundred and eighteen of the acts of nineteen hundred and twelve.

"Certificate of a plumbing corporation or certificate of a plumbing partnership", a certificate of registration issued to a master plumber authorizing him to conduct the plumbing business as a corporation or as a partner in a partnership, as the case may be.

"Certificate of a gas fitting corporation or certificate of a gas fitting partnership", a certificate of registration issued to a master gas fitter authorizing him to conduct the gas fitting business as a corporation or as a partner in a partnership, as the case may be.

"Examiners", the board of state examiners of plumbers and gas fitters appointed under section thirty-six of chapter thirteen.

"Gas fitting", any work which includes the installation, alteration, and replacement of a piping system beyond the gas meter outlet or regulator through which is conveyed or intended to be conveyed fuel gas of any kind for power, refrigeration, heating or illuminating purposes including the connection therewith and testing of gas fixtures, ranges, refrigerators, stoves, water heaters, house heating boilers, and any other gas using appliances, and the maintenance in good and safe condition of said systems, and the making of necessary repairs and changes.

"Journeyman gas fitter", a person who himself does any work in gas fitting, subject to inspection under any law, rule or regulation.

"Journeyman plumber", a person who himself does any work in plumbing and gas fitting, subject to inspection under any law, rule or regulation.

"Master gas fitter", a gas fitter, having a regular place of business and who, by himself or journeyman gas fitters in his employ, performs gas fitting work, subject to inspection and in compliance of any law, rule or regulation pertaining to same.

"Master plumber", a plumber having a regular place of business and who, by himself or journeyman plumbers in his employ, performs plumbing and gas fitting work, subject to inspection and in compliance with any law, rule, or regulation pertaining to same.

"Plumbing", the work and practice, materials and fixtures used in the installation, removal, maintenance, extension, and alteration of a plumbing system; of all piping, fixtures, fixed appliances, and appurtenances in connection with any of the following: sanitary drainage, storm drainage facilities, special wastes, the venting system and the public or private water-supply systems, within or adjacent to any building, structure, or conveyance; to their connection with any point of public disposal or other acceptable terminal within the property line.

"Apprentice gas fitter", a person who is learning and working at the business of gas fitting under the direct supervision of a master plumber, master gas fitter, journeyman plumber or journeyman gas fitter.

"Apprentice plumber", a person who is learning and working at the business of plumbing under the direct supervision of a master plumber or journeyman plumber.

"Registered", registered in accordance with section three of chapter five hundred and thirty-six of the acts of nineteen hundred and nine, section two of chapter five hundred and ninety-seven of the acts of nineteen hundred and ten or chapter five hundred and eighteen of the acts of nineteen hundred and twelve.

"Undiluted liquefied petroleum gas installer", a person who does any work in installing undiluted liquefied petroleum gas systems and appliances.

"Limited undiluted liquefied petroleum gas installer", a person who does any work in installing, connecting and moving from place to place undiluted liquefied petroleum gas salamanders, space heaters and related equipment used in buildings under construction.

Amended by St.1963, c. 431, § 1; St.1969, c. 731, § 1; St.1977, c. 843, § 3.

§ 2. Application of statutes

Sections one through twenty-two, except section twenty-one, shall apply to all cities and towns.

Amended by St.1958, c. 332; St.1963, c. 228, § 1; St.1971, c. 604, § 1.

§ 3. Master plumbers or gas fitters, journeymen and apprentices; licensing; advertising; display of license or certificate

No person shall engage in the business as a master plumber or a master gas fitter or work as a journeyman plumber or as a journeyman gas fitter or as an apprentice plumber or as an apprentice gas fitter or as an undiluted liquefied petroleum gas installer or as a limited undiluted liquefied petroleum gas installer, nor solicit, by sign, listing or any other form of advertisement, work regulated or controlled by this chapter or by any ordinance, by-law, rule or regulation made hereunder, unless he is lawfully registered, or has been licensed by the examiners as provided in this chapter. Any person so licensed as a master plumber or a journeyman plumber may carry on the work of a gas fitter throughout the commonwealth, notwithstanding any local ordinance, by-law, rule or regulation to the contrary, and may engage in the work of installing house drainage and connecting with common sewers without being required to have any local license therefor, but shall be subject to local regulations relative to permits and bonding requirements. This section shall not apply to authorized employees of any gas company organized under chapter one hundred and sixty-four; said employees shall not require a gas fitter's license while performing work for said gas company.

The license or certificate of a journeyman plumber or a gas fitter or an apprentice plumber or a gas fitter shall be exhibited whenever required by an inspector of plumbing or gas fitting.

The license or certificate of a master plumber or a master gas fitter shall at all times be displayed conspicuously within his place of business. Any sign, listing or advertisement of a master plumber, a master gas fitter, a journeyman plumber or a journeyman gas fitter shall contain his designation and license number.

Amended by St.1948, c. 382; St.1958, c. 263; St.1959, c. 284; St.1960, c. 190; St.1963, c. 148, § 1; St.1963, c. 431, § 2; St.1977, c. 843, § 4.

§ 3A. Apprentices; licensing; application; employment; on-the-job training, rules and regulations

Every apprentice shall before starting his apprenticeship file an application, accompanied by the appropriate fee, with the examiners, requesting that he be issued an apprentice license. Said application shall be made on a form to be furnished by the examiners, and shall require the applicant to state his age, the date on which he is to commence his apprenticeship, the name and address of his employer, and such other information as the examiners may require. Upon receipt thereof the examiners shall license said applicant as an apprentice and shall forthwith mail to him a certificate to that effect.

A person may be employed as an apprentice plumber by a master plumber only. A person may be employed as an apprentice gas fitter by a master gas fitter only. Such apprentices shall work under the direct supervision of a master plumber or a journeyman plumber or a master or a journeyman gas fitter. A master plumber or a master gas fitter may employ one or more apprentices but not more than one apprentice may work under the direct supervision of a master plumber, a master gas fitter or a journeyman plumber or a journeyman gas filter.

Notwithstanding the provisions of this section, students in a vocational school accredited by the department of education, under the direct personal supervision of a master plumber or a journeyman who is certified as an instructor by the division of occupational education in said department shall be permitted to engage in an on-the-job training program, so-called, on installations approved by the examiners and conducted in cooperation with such a vocational school.

The examiners may formulate rules and regulations relative to said on-the-job training program.

Added by St.1963, c. 431, § 3. Amended by St.1973, c. 951; St.1977, c. 843, § 5.

§ 3B. Certificates of plumbing or gas fitting corporations or partnerships

A person duly licensed in the commonwealth as a master plumber or as a master gas fitter may apply to the examiners for a certificate of a plumbing corporation or for a certificate of a gas fitting corporation or a certificate of a plumbing partnership or a certificate of a gas fitting partnership upon payment of a fee of fifty dollars and a biennial renewal fee of fifty dollars. A certificate of a plumbing corporation shall authorize a master plumber to conduct the plumbing and gas fitting business as a corporation, a certificate of a gas fitting corporation shall allow a master gas fitter to conduct the gas fitting business as a corporation, provided, that in a plumbing corporation the master plumber and in a gas fitting corporation the master gas fitter is an officer of the corporation organized under the laws of the commonwealth to engage in the business of plumbing or in the business of gas fitting. A certificate of plumbing partnership shall authorize a master plumber to conduct the plumbing and gas fitting business as a partnership, a certificate of a gas fitting partnership shall authorize a master gas fitter to conduct the gas fitting business as a partnership; provided, that all partners in a plumbing partnership are master plumbers and in a gas fitting partnership all partners are master gas fitters. For the purpose of this section, a gas company, as defined in section one of chapter one hundred and sixty-four, shall be deemed a gas fitting corporation.

Added by St.1969, c. 731, § 2. Amended by St.1977, c. 843, § 6; St.1979, c. 109.

§ 4. Rules of examiners; qualifications of applicants; applications; examinations; issuance of license; probationary license; credit for veterans

Text of section as amended by St.1977, c. 378, § 2, effective January 1, 1980

The examiners may make such rules as they deem proper for the performance of their duties and rules governing the qualifications of applicants for examination, which shall take effect when approved by the general court and by the department of public health. They shall examine each applicant desiring to engage in the business of a master plumber or to work as a journeyman, as to his practical knowledge of plumbing, house drainage, plumbing ventilation and gas fitting, as such term is construed in section twelve H of chapter twenty-five, and shall subject him to a practical test satisfactory to the examiners, who if satisfied of his competence shall issue to him a license as applied for. They shall hold frequent examinations in the city of Boston and shall also hold examinations twice each year in five other locations in the commonwealth. Public notice shall be given of all examinations. Every application for examination shall be in the handwriting of the applicant who shall be notified by the examiners of the time and place of examination. The examiners may, without payment of any fee, issue a probationary license in force for six months to a person who, having worked as an apprentice, or under a verbal agreement for instruction, for not less than three years, presents an application therefor with the signed endorsement of his employer agreeing to be responsible for all work done under the license and to have the licensee, at the expiration of the license, present himself for examination as a journeyman.

They shall grant a credit of five per cent to the examination standing of each applicant who is a veteran, as defined in clause Forty-third of section seven of chapter four.

Amended by St.1946, c. 502; St.1947, c. 382; St.1954, c. 627, § 30; St.1962, c. 488; St.1967, c. 282; St.1977, c. 378, §§ 1, 2.

For text of section as amended by St.1977, c. 843, § 6, see § 4, post

§ 4. Rules of examiners; qualifications of applicants; applications; examinations; issuance of license; probationary license; credit for veterans

Text of section as amended by St.1977, c. 843, § 6

The examiners may make such rules as they deem proper for the performance of their duties and rules governing the qualifications of applicants for examination, which shall take effect when approved by the general court and by the department of public health. They shall examine each applicant desiring to engage in the business of a master plumber or a journeyman plumber, as to his practical knowledge of plumbing, house drainage, plumbing ventilation, and gas fitting. They shall examine each applicant desiring to engage in the business of a master gas fitter or a journeyman gas fitter as to his practical knowledge pertaining to gas fitting, natural and manufactured gas and the installation of undiluted liquefied petroleum. They shall examine each person who applies to be licensed as an undiluted liquefied petroleum gas installer, and each person who applies to be licensed as a limited undiluted liquefied petroleum gas installer. They shall subject each applicant to a practical test satisfactory to the examiner, who, if satisfied of his competence, shall issue to him a license as applied for. They shall hold frequent examinations in the city of Boston, and also at such other convenient places within the commonwealth as they deem necessary. Public notice shall be given of all examinations. Every application for examination shall be in the handwriting of the applicant who shall be notified by the examiners of the time and place of examination. The examiners may, without payment of any fee, issue a probationary license in force for six months to a person who, having worked as an apprentice, or under a verbal agreement for instruction, for not less than three years, presents an application therefor with the signed endorsement of his employer agreeing to be responsible for all work done under the license and to have the licensee, at the expiration of the license, present himself for examination as a journeyman.

They shall grant a credit of five per cent to the examination standing of each applicant who is a veteran, as defined in clause Forty-third of section seven of chapter four.

Amended by St.1946, c. 502; St.1947, c. 382; St.1954, c. 627, § 30; St.1962, c. 488; St.1967, c. 282; St.1977, c. 843, § 6.

For text of section as amended by St.1977, c. 378, § 2, effective January 1, 1980, see § 4, ante

§ 4A. Plumbers employed by cities, institutions or corporations; installations and repairs

Master plumbers, journeymen, or apprentice plumbers, regularly employed by cities and towns or by institutions or corporations that are not engaged in the business of plumbing, may install such plumbing or make such repairs as may be required on the premises and property owned or leased and occupied by such cities, towns, institutions or corporations, provided that all such work performed by said plumbers shall be in compliance with the pertinent sections and provisions of this chapter.

Added by St.1969, c. 731, § 3.

§ 5. Fees for licenses and examinations

The fee for the first license of a master plumber or a master gas fitter shall be twenty-five dollars; for any biennial renewal thereof, twenty-four dollars; and for an examination therefor, twenty dollars. The fee for the first license of a journeyman plumber or a journeyman gas fitter shall be ten dollars, for any biennial renewal thereof, twelve dollars; and for an examination therefor, ten dollars. The fee for the first license of an apprentice shall be three dollars and for any biennial renewal thereof, six dollars. The fee for the original license of an undiluted liquefied petroleum gas installer shall be twenty dollars; for any biennial renewal fee thereof, twelve dollars and for an examination therefor, ten dollars. The fee for the original license of a limited undiluted petroleum gas installer shall be twenty dollars; for any biennial renewal fee therefor, ten dollars.

Amended by St.1954, c. 200; St.1963, c. 431, § 4; St.1965, c. 645, § 1; St.1966, c. 209; St.1971, c. 533; St.1977, c. 843, § 7.

§ 6. Territorial coverage, transfer term, renewal, suspension and revocation of licenses; names of licensees forwarded to towns; registration

Licenses and certificates issued by the examiners shall be valid throughout the commonwealth, but shall not be assignable or transferable. The examiners shall forward to the board of health of each town, or to the inspector of buildings having control of the enforcement of regulations relative to plumbing and gas fitting in such town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for two years and may be renewed every two years on or before May first, or in case of absence, sickness or other disability of the holder, on or before such later date as the examiners may permit, upon payment of the required fee. Each holder of a master plumber's or a master gas fitter's certificate or license shall register his name and business address with said inspector of buildings if he has such control, otherwise with the board of health, in the town wherein he desires to engage in business as a master plumber or a master gas fitter. Any such license or certificate may, after notice and hearing, be suspended or revoked by the examiners upon the violation by the holder thereof of any statute, ordinance, by-law, rule or regulation relative to plumbing or gas fitting, upon failure or refusal of the holder thereof to comply with the rules and requirements of the examiners, or for other sufficient cause. In case of failure to renew a license aforesaid on or before May first in any year or such later date as the examiners may permit as aforesaid, the person named therein may, upon payment of the said fee and, at the discretion of the examiners, a deferred renewal fee of ten dollars, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof which shall expire on the ensuing first day of May; provided, that such renewed license shall not constitute its holder a licensee for any period preceding its issue.

Amended by St.1934, c. 347, § 2; St.1965, c. 645, § 2; St.1977, c. 843, § 7.

§ 7. Notice to examiners of violation of statute, ordinance or regulation

If, in the opinion of such inspector of buildings, if any, otherwise of the board of health, of a town, the holder of a license or certificate violates any statute, ordinance, by-law, rule or regulation relative to plumbing and gas fitting, said inspector or board of health of the town where such violation is committed shall give notice thereof to the examiners.

Amended by St.1977, c. 843, § 7.

§ 8. Repealed by St.1965, c. 358, § 1

§ 9. Local inspectors in towns regulated by rules of examiners; appeals from decisions; decisions of examiners

Within thirty days after rules have taken effect as provided in the preceding section, the local board of health shall appoint an inspector of plumbing and gas fitting having the qualifications and duties specified in sections eleven and twelve to hold office for three years unless, after hearing, sooner removed for cause. He shall receive from the town compensation to be fixed by the appointing board, subject to the approval of the selectmen. Appeal from a decision of such inspector may be made to the examiners within ten days from the date of notice of his decision. The appellant shall deposit five dollars with the examiners to be returned if the appeal is sustained, otherwise to be paid to the commonwealth. The decision of the examiners, a copy of which shall be served on each person interested, shall be subject to the approval of the department of public health and to review by the superior court.

Amended by St.1977, c. 843, § 8.

§ 10. Inspection districts; expense

Two or more towns may unite in forming an inspection district, the expense thereof to be paid on such basis as may be agreed upon by the boards of health thereof.

§ 11. Inspectors appointed from civil service list; approval of plumbing or gas fitting; exemption

The said inspector of buildings, if any, otherwise the board of health, of each city and town, shall, within three months after it becomes subject to sections one to sixteen, inclusive, appoint from the classified civil service list one or more inspectors of plumbing and one or more inspectors of gas fitting, who shall, in the case of the inspectors of plumbing, be practical plumbers and shall have had practical experience either as master or journeymen plumbers, continuously, during five years next preceding their appointment and in the case of inspectors of gas fitting, be practical gas fitters and shall have had practical experience either as master or journeymen gas fitters, continuously, during five years next preceding their appointment; provided, that any time spent in wartime service as defined in clause Forty-third of section seven of chapter four shall be deemed a part of the continuous practical experience so required; provided, however, that any such city or town may appoint plumbing inspectors who shall also be gas fitting inspectors. Such inspector of buildings or board may remove them subject to chapter thirty-one, and shall, subject to approval of the city council or board of selectmen, fix their compensation, which shall be paid by the city or town. Said inspectors of plumbing or inspectors of gas fitting shall inspect all plumbing or gas fitting, as the case may be, in the process of construction, alteration or repair for which permits are granted within their respective cities and towns, and shall report to their appointing power or board violations of any law, ordinance, by-law, rule or regulation relative to plumbing or gas fitting; they shall perform such other appropriate duties as may be required. The approval of plumbing or gas fitting by any inspectors other than those provided for by this chapter shall not be a compliance therewith.

In a town having a population of less than five thousand persons the appointment of a plumbing inspector shall be exempt from the provisions of chapter thirty-one.

Amended by St.1945, c. 703, § 11; St.1954, c. 627, § 31; St.1977, c. 843, § 9; St.1978, c. 289, § 1.

§ 12. Additional inspectors; inspector engaging in plumbing or gas fitting work

No inspector of plumbing or inspector of gas fitting shall inspect or approve any plumbing or gas fitting work done by himself, his employer, employee or one employed with him, but in a city or town subject to sections one to sixteen, inclusive, the said inspector of buildings, or the board of health, shall in the manner provided in the preceding section appoint an additional inspector of plumbing or inspector of gas fitting as therein provided, who shall inspect plumbing or gas fitting so done. Said additional inspector may act in the absence or disability of the local inspector and for his services shall receive like compensation.

This section shall not apply to any city or town establishing an annual salary for an inspector of plumbing or inspector of gas fitting, and in such city or town an inspector of plumbing or inspector of gas fitting shall not engage or work at the business of plumbing or gas fitting; provided, however such an inspector may perform the work of a journeyman plumber or gas fitter outside the area over which he exercises jurisdiction as an inspector.

Amended by St.1977, c. 843, § 9; St.1978, c. 560, § 1.

§ 13. Regulations

In all cities and towns, the examiners, subject to the approval of the department of public health, shall make and from time to time in like manner alter, amend, and repeal rules and regulations relative to the construction, alteration, repair and inspection of plumbing in such cities and towns, which rules and regulations shall be reasonable, uniform and based on generally accepted standards of plumbing practice; provided, however, that the application of such rules and regulations may be varied by the examiners in a particular city or town upon petition of the board of health or health department thereof. The examiners shall adopt a regulation requiring all cities and towns to use a uniform application for a permit to perform plumbing work.

The examiners, subject to the approval of the department of public safety, shall make and from time to time in like manner alter, amend, and repeal rules and regulations relative to gas fitting in buildings throughout the commonwealth, and relative to liquefied petroleum gas fitting containers and regulating equipment in such buildings, which rules shall be reasonable, uniform, based on generally accepted standards of engineering practice, and designed to prevent fire, explosion, injury and death, and not inconsistent with rules and regulations relative to the distribution of natural gas which are promulgated pursuant to chapter one hundred and sixty-four or the provisions of chapter one hundred and forty-two or the rules and regulations made under the authority thereof. Any person aggrieved by a ruling interpreting the rules and regulations made under this paragraph, including any person aggrieved by any such rule made by the building commissioner of Boston, may appeal to the examiners in writing within ten days after such ruling; and, subject to the provisions of chapter thirty A relative to adjudicatory proceedings, said examiners shall hear and decide such appeal. Subject to said provisions of chapter thirty A, such decision shall be final and binding upon, and complied with by, all parties in interest.

Amended by St.1934, c. 284; St.1954, c. 157; St.1963, c. 228, § 2; St.1965, c. 358, § 2; St.1971, c. 604, § 2; St.1973, c. 193; St.1975, c. 706, § 286; St.1977, c. 843, § 9; St.1978, c. 249.

§ 14. Persons learning plumbing and gas fitting businesses

Sections one to sixteen, inclusive, shall apply to all persons learning the business of plumbing and gas fitting when they are sent out to do the work of a journeyman.

Amended by St.1977, c. 843, § 9.

§ 15. Reports by inspectors of buildings and boards of health

Inspectors of buildings and boards of health shall annually, before June first, make a detailed report to their respective cities or towns of all their proceedings under sections one to sixteen, inclusive, during the preceding year.

Amended by St.1952, c. 112.

§ 16. Work or employment of workers without required license; violation of statute, ordinance or regulation by persons, cities or towns

Every person engaged in the business of a master plumber or a master gas fitter or working as a journeyman plumber or a journeyman gas fitter or as an apprentice gas fitter or an apprentice plumber or as an undiluted liquefied petroleum gas installer or a limited undiluted liquefied petroleum gas installer not lawfully registered or licensed, if required by the chapter, every person engaging in or working at the business or plumbing or gas fitting in a city or town when forbidden to do so under section seven, every master plumber or master gas fitter who engages or employs any person to work as a journeyman or as an apprentice who has not been so licensed, and every person violating any provision of sections one to fifteen, inclusive, of this chapter or any ordinance, by-law, rule or regulation made thereunder, shall be punished by a fine not exceeding one hundred dollars. Any city or town subject to the preceding sections of this chapter neglecting to comply with any of its provisions shall forfeit fifty dollars to the commonwealth for each month during which such neglect continues.

Amended by St.1963, c. 431, § 5; St.1977, c. 843, § 10.

§ 17. Statements by manufacturer on range boilers and water heaters; certificates relative to cast iron water fronts, heater elements and hot water tanks

No range boiler, tank, vessel or container, ferrous or non-ferrous, in which water is to be heated or stored under pressure for domestic, culinary or sanitary purposes, in this section and in sections eighteen and nineteen referred to as hot water tanks, shall be sold or offered for sale unless it is plainly marked by the manufacturer, by stamping into the metal of the tank, or on a metal plate permanently attached to the tank, in a conspicuous place, as follows:—

A. Manufacturer's name or registered trade mark.

B. Rated capacity of hot water tank in United States gallons.

C. Hydrostatic pressure in pounds per square inch at which the tank has been tested by the manufacturer, following the words "Tested to".

D. Maximum allowable working pressure in pounds per square inch.

Notwithstanding the requirements of the preliminary paragraph and paragraphs A to D, inclusive, of this section, the markings therein referred to shall not be required, in the case of cast iron hot water fronts, so called, or hot water tanks that are insulated or enclosed in a jacket or casing, to be stamped into the metal thereof or to be stamped on a metal plate permanently attached thereto; provided, that any manufacturer selling such hot water fronts within the commonwealth shall in writing certify to the department of public safety and the board of state examiners of plumbers that every such water front sold by him complies with the pertinent provisions of law; and provided, further, that any manufacturer of hot water tanks that are insulated or enclosed in a jacket or casing which are to be sold within the commonwealth shall certify in writing to the department of public safety and the board of state examiners of plumbers that every such tankless water heater coil or element, or hot water tank manufactured by him complies with the pertinent provisions of law, and shall permanently attach to the largest segment of said jacket or casing, in a conspicuous place, a metal plate which has stamped into the metal thereof the requirements of paragraphs A to D, inclusive.

Amended by St.1936, c. 234; St.1941, c. 518, § 1; St.1945, c. 477; St. 1955, c. 612, § 1.

§ 18. Construction, installing, relocating and repairing requirements; capacity; strength; solder; pressure

No hot water tank shall be repaired, relocated or installed and connected, unless it meets the following construction requirements:—

A. The actual capacity of a hot water tank shall be within seven and one half per cent of the capacity stamped on the tank.

B. A hot water tank shall be so constructed by riveting, welding, or otherwise, as to withstand the stamped test pressure without visible permanent distortion, and be so designed as to have an ultimate strength sufficient to withstand a hydrostatic pressure twenty-five per cent higher than the stamped test pressure.

C. Solder which melts at a temperature below seven hundred degrees Fahrenheit shall not be used to hold the tank together, but may be used to make it water tight, cistern tanks excepted.

D. A hot water tank in which water is to be heated or stored under pressure greater than fifteen pounds per square inch shall have a stamped test pressure of not less than two hundred pounds per square inch.

E. The maximum working pressure at which a hot water tank may be installed shall not be greater than fifty per cent of the test pressure marked on the tank.

Amended by St.1941, c. 518, § 2; St.1976, c. 39, § 1.

§ 19. Safety devices for hot water tanks; statements by manufacturer; approval; pipes and fittings

No hot water tank shall be installed and connected unless it is protected with safety devices as follows:—

A. A hot water tank in which water is to be heated or stored under pressure greater than fifteen pounds per square inch shall be equipped with a suitable pressure relief valve installed in a tapping in the tank or in the cold water supply line, or the hot water outlet line, with no shut-off valve between the relief valve and the tank. The pressure relief valve shall be set by the manufacturer to operate at a pressure not more than the maximum working pressure stamped on the tank or jacket or casing, and shall be so constructed that said setting cannot be exceeded by normal means of adjustment.

B. A hot water tank to which a heating device or appliance capable of delivering water to the tank at a temperature greater than two hundred and twelve degrees Fahrenheit is connected shall be equipped with a suitable temperature relief valve so adjusted and installed as to prevent development of, or accumulation of, water which is at a temperature in excess of two hundred and twelve degrees Fahrenheit. Said temperature relief valve shall be installed in a tapping directly in or on the tank, within twelve inches of the top of a vertical tank, or within six inches of the top of a horizontal tank, with no fittings between the valve and the tank, except that a bushing may be used to reduce the tapping to fit the valve, or the valve shall be installed in the hot water outlet pipe as close to the top of the tank as possible. In no case shall the heat sensitive member of the temperature relief valve be more than five inches away from the top of the tank. The discharge outlet of the temperature relief valve shall be connected by means of a non-ferrous pipe or tubing not less than three eighths inch inside diameter, with no shut-off, to an open plumbing fixture, or to within twelve inches of the basement floor. A thermostatically controlled hot water tank may be protected by an automatic fuel shut-off device in addition to the thermostat. Such shut-off device shall be installed in the same location and perform the same function as said temperature relief valve.

C. All parts of temperature and pressure relief valves which are in contact with water shall be made of non-ferrous metals or materials having suitable corrosion resisting properties. All pipe and fittings between relief valves and the hot water tank shall be of non-ferrous metals.

D. Relief valves shall be marked by the manufacturer, by stamping or casting in the metal of the valve, or on a metal tag permanently attached to the valve, as follows:—

1. Manufacturer's name or registered trade mark.
2. The type or style, or the type and style, of the valve.
3. The pressure setting of the valve in pounds per square inch.
4. The temperature setting in degrees Fahrenheit.
5. Temperature relieving capacity in B. T. U. per hour.

Notwithstanding the requirements of paragraph B of this section, the protective devices specified therein shall not be required in the case of that portion of tankless water heaters which contain water to be heated or stored under the provisions of section seventeen. Said portion of tankless water heaters shall be equipped with a pressure relief valve and an automatic tempering device, set to deliver water not exceeding one hundred and eighty degrees Fahrenheit and located between said tankless water heater and any hot water supply pipe which it serves.

All pipes and fittings between the tankless water heater and the pressure relief valve and the tempering device shall be of non-ferrous metals. All parts of the tempering device which are in contact with the water shall be of non-ferrous metals or other materials having suitable corrosion-resisting properties. Said tempering device shall be marked by the manufacturer by casting or stamping in the metal of the device, or on a metal tag permanently attached to the device, as follows:—

1. Manufacturer's name or registered trade name.
2. The type or style, or the type and style, of the device.
3. The temperature settings, in degrees Fahrenheit, plainly marked.

E. Temperature and pressure relief valves and other devices referred to in this section shall be subject to the approval of the inspectors of plumbing or other proper authorities.

F. All pipes and fittings in the circulating system between a hot water tank and the heating device or appliance shall be non-ferrous, and of ample size so as to make it possible to heat seventy-five per cent of the available water in the tank without raising the temperature of any part of the water above two hundred and twelve degrees Fahrenheit.

G. No hot water tank shall be installed without being equipped with an approved device located so as to prevent any partial vacuum therein.

Amended by St.1941, c. 518, § 3; St.1955, c. 612, § 2; St.1976, c. 39, § 2.

§ 20. Installed or junked range boilers

The three preceding sections shall not apply to the sale or offering for sale of installed range boilers or to the sale or offering for sale of range boilers as junk.

§ 21. Buildings used by commonwealth

The examiners shall formulate rules relative to the construction, alteration, repair and inspection of all plumbing and gas fitting work in buildings owned and used by the commonwealth, subject to the approval of the department of public health, and all plans for plumbing and gas fitting in such buildings shall be subject to the approval of the examiners.

Added by St.1938, c. 302. Amended by St.1977, c. 843, § 11.

§ 22. Enforcement and violation of statutes

Whoever violates any provision of section seventeen, eighteen or nineteen shall be punished by a fine of not more than fifty dollars. Inspectors of plumbing or other proper authorities shall cause the provisions of said sections to be enforced.

Added by St.1941, c. 518, § 4.

CHAPTER 143.

INSPECTION AND REGULATION OF, AND LICENSES FOR, BUILDINGS, ELEVATORS AND CINEMATOGRAPHS

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GENERAL PROVISIONS

§ 1. Definitions

In this chapter the following terms, unless a contrary meaning is required by the context or is specifically prescribed, shall have the following meanings:

"Alteration", change in or addition to a building which reduces the means of exit or fire resistance or changes its structural support, use or occupancy.

"Building", a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context requires as though followed by the words "or part or parts thereof".

"Commission", the state building code commission established by section sixteen of chapter twenty-three B.

"Commissioner", the commissioner of public safety.

"Department", department of public safety.

"Inspector", an inspector in the division of inspection of the department, except when qualified by the word "local", whereupon it shall mean the inspector of buildings, building commissioner or local inspector of a city, town or district, unless otherwise provided in this chapter.

"Repair", the reconstruction or renewal of a building or structure or part thereof damaged by fire or other cause.

"Specialized code", all building codes, rules or regulations pertaining to building construction, reconstruction, alteration, repair or demolition promulgated by and under the authority of the various boards which have been authorized from time to time by the general court.

"State building code", the state building code and amendments and rules and regulations thereto as promulgated by the state building code commission under sections sixteen, seventeen and eighteen of chapter twenty-three B.

"Structure", a combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof".

"Theatre", a building or part thereof in which it is intended to make a business of the presentation of performances for the entertainment of spectators, which has a seating capacity of more than four hundred, with a stage which can be used for scenery and other appliances.

Amended by St.1941, c. 694; St.1943, c. 544, § 7B; St.1943, c. 546, § 1; St.1945, c. 480; St.1946, c. 363, § 1; St.1955, c. 662, § 1; St.1959, c. 446, § 1; St.1962, c. 720, § 1; St.1966, c. 614, § 5; St.1970, c. 199, §§ 1 to 3; St.1970, c. 888, § 20; St.1971, c. 779, § 1; St.1971, c. 1098, §§ 1, 2; St.1972, c. 785, § 9; St.1972, c. 802, § 12; St.1974, c. 541, §§ 10, 11.

§ 2A. Buildings operated by commonwealth or its subdivisions; window cleaners

The provisions of this chapter relative to the safety of persons in buildings shall apply to buildings and structures, other than the state house, owned, operated or controlled by the commonwealth, and to buildings and structures owned, operated or controlled by any department, board or commission of the commonwealth, or by any of its political subdivisions, in the same manner and to the same extent as such provisions apply to privately owned or controlled buildings occupied, used or maintained for similar purposes. The provisions of this chapter relative to the inspection of buildings privately owned shall apply in the same manner to the inspection of buildings subject to this section. Notwithstanding any other provision of law to the contrary, the provisions of the state safety code for window cleaners shall also be applicable to the state house in the same manner and to the same extent as such provisions apply to privately owned or controlled buildings.

Added by St.1948, c. 582, § 1. Amended by St.1951, c. 430; St.1972, c. 802, § 13.

INSPECTION OF BUILDINGS

§ 3. Inspector of buildings or building commissioner; local inspectors; employment and designation; qualifications; city or town without local inspectors

The chief administrative officer of each city or town shall employ and designate an inspector of buildings or building commissioner as well as such other local inspectors as are reasonably necessary to assist the inspector of buildings or building commissioner to administer and enforce the state building code. The building commissioner or inspector of buildings shall be the administrative chief in a city or town responsible for administering and enforcing the state building code. Any additional persons employed by a city or town to assist the building commissioner or inspector of buildings in the performance of his duties shall be called local inspectors. The local inspector shall also be responsible for enforcing the state building code. The inspector of buildings or building commissioner shall report directly and be solely responsible to the person or public body that appointed him. Two or more cities or towns may combine and share expenses in the appointment of any building commissioner or inspector of buildings and local inspectors. If the board of selectmen of two or more towns so vote, such towns may enter into an agreement with the county commissioners of the county wherein such towns are located relative to the appointment and compensation of a building commissioner or inspector of buildings and local inspectors. The county commissioners shall apportion the budget approved for the building commission or inspector of buildings and local inspectors in accordance with said agreement. Said apportionment shall forthwith be certified by said commissioners to the board of selectmen of each member town and the amounts so certified shall be appropriated and paid to the county treasurer in accordance with provisions of said agreement.

Each inspector of buildings or building commissioner shall have had at least five years of experience in the supervision of building construction or design or in the alternative a four year undergraduate degree in a field related to building construction or design. In addition, such persons shall have had a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation and safe exits; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

Each local inspector shall have had at least five years of experience in the supervision of building construction or design or in the alternative a two year associate degree in a field related to building construction or design. In addition, such persons shall have a general knowledge of the quality and strength of building materials; a general knowledge of the accepted requirements for building construction, fire prevention, light, ventilation and safe exits; and a general knowledge of other equipment and materials essential for safety, comfort, and convenience of the occupants of a building or structure.

In the event that a city or town shall be without a local inspector, the commission may, with the approval of the commissioner, direct an inspector to temporarily fulfill the duties of the local inspector for a period not to exceed thirty days. In such an event the inspector shall have all the powers of a local inspector. Each city or town shall reimburse the commonwealth for the actual cost of such services provided.

The clerk of each city and town shall annually, not later than April first, transmit to the commission in writing the name and official address of each inspector of buildings or building commissioner and each local inspector in such city or town.

Added by St.1943, c. 544, § 2. Amended by St.1945, c. 674, § 1; St.1946, c. 363, § 2; St.1946, c. 423; St.1949, c. 156, §§ 3, 4; St.1951, c. 85; St.1958, c. 515; St.1959, c. 607, § 2; St.1968, c. 499, § 1; St.1972, c. 802, § 15; St. 1973, c. 1152, § 1; St.1974, c. 541, § 11A; St.1975, c. 426.

§ 3A. Enforcement of state building code as to structures or buildings; review of orders, practices, etc.; reports

Unless otherwise provided by the provisions of the state building code, the local inspector shall enforce the state building code as to any building or structure within the city or town from which he is appointed, including any building or structure owned by any authority established by the legislature but not owned by the commonwealth, and such state building code shall be the code for all buildings and structures within such city or town. In the event of a conflict between said code and a statute, ordinance or by-law regulating any historic district, regional historic district or architecturally controlled district, provisions of any such statute, ordinance or by-law regulating exterior architectural features within such district shall prevail. The inspector shall enforce the state building code as to any building or structure within any city or town that is owned by the commonwealth or any departments, commissions, agencies or authorities of the commonwealth. The inspector shall have all the powers of a local inspector under this chapter and under the state building code as to such buildings or structures that are owned by the commonwealth or any of its departments, agencies, commissions or authorities.

The inspector may review any order or decision of a local inspector. The inspector shall supervise the enforcement of the state building code, make periodic reviews of all local building inspection practices and make recommendations for improvement of such practices. Reports of such reviews shall be filed with the commission.

The provisions of this section shall not apply to bridges and their appurtenant supporting structures which have been or are to be constructed by or are under the custody and control of the department of public works or the Massachusetts Turnpike Authority or for which said department or authority has maintenance responsibility.

Added by St.1943, c. 544, § 2. Amended by St.1945, c. 482, § 1; St.1972, c. 802, § 16; St.1974, c. 541, § 12; St.1975, c. 144, § 2; St.1979, c. 617, § 2.

§ 3L. Regulations relative to electrical wiring and fixtures; notice of electrical installation

The board of fire prevention regulations shall make and promulgate, and from time to time may alter, amend and repeal, rules and regulations relative to the installation, repair and maintenance of electrical wiring and electrical fixtures used for light, heat and power purposes in buildings and structures subject to the provisions of sections three to sixty, inclusive, and the state building code. Such regulations shall be in accordance with generally accepted standards of engineering practice, and shall be designed to provide reasonable uniform requirements of safety in relation to life, fire and explosion.

Upon the making of such rules and regulations and prior to their promulgation, the board shall hold a public hearing thereon, notice of which shall be given by advertising in at least one newspaper in each of the cities of Boston, Worcester, Springfield, Fall River, Lowell and Lynn, at least ten days before said hearing. If, subsequent to their being deposited with the state secretary, as provided herein, the board on its own initiative contemplates changes in said rules and regulations, or if a petition is filed by any other person for changes therein, like notice and a hearing shall be given and held before the adoption thereof.

Such rules and regulations, and any alterations, amendments or repeals thereof shall be deposited with the state secretary, and the same shall become effective when so deposited.

No person shall install for hire any electrical wiring or fixtures subject to this section without first or within five days after commencing the work giving notice to the inspector of wires appointed pursuant to the provisions of section thirty-two of chapter one hundred and sixty-six. Said notice shall be given by mailing or delivering a permit application form prepared by the board, to said inspector. Any person failing to give such notice shall be punished by a fine not exceeding twenty dollars. This section shall be enforced by the inspector of wires within his jurisdiction and the state examiners of electricians.

Any person installing for hire electrical wiring or fixtures subject to this section shall notify the inspector of wires in writing upon the completion of the work. The inspector of wires shall, within five days of such notification, give written notice of his approval or disapproval of said work. A notice of disapproval shall contain specifications of the part of the work disapproved, together with a reference to the rule or regulation of the board of fire prevention regulations which has been violated.

Added by St.1950, c. 617, § 1. Amended by St.1956, c. 403; St.1959, c. 355; St.1961, c. 531, § 2; St.1972, c. 802, § 18; St.1977, c. 64, § 1.

§ 3N. Gas fitting; permit; notice; penalties

No person shall engage in gas fitting in the city of Boston without first making application to the building commissioner of said city and obtaining a permit therefor in accordance with the state building code; nor shall any person engage in gas fitting in any other city or town without first giving such notice as shall be prescribed by rules and regulations made by the board established under section twelve H of chapter twenty-five.

Whoever violates any provision of this section shall be punished by a fine of not more than five hundred dollars.

Rules and regulations adopted under section twelve H of chapter twenty-five may provide penalties for the violation thereof not exceeding five hundred dollars for any one offence and may provide that each day during any portion of which a violation is permitted to exist shall be a separate offence.

Added by St.1960, c. 737, § 2. Amended by St.1972, c. 802, § 19.

§ 3O. Gas fitting; appointment and duties of inspector

Each city and town shall provide by ordinance or by-law for the appointment of an inspector of gas piping and gas appliances in buildings who shall be a licensed plumber or licensed gas fitter. Said inspector shall enforce the rules and regulations adopted by the board established under section twelve H of chapter twenty-five.

Said inspector shall also issue permits for the installation of containers of liquefied petroleum gas, and he shall inspect such installation and the regulating equipment used in connection therewith. He shall notify the head of the fire department, as defined in section one of chapter one hundred and forty-eight, of each permit so issued and the location of each container of liquefied petroleum gas installed thereunder.

A town in which the only gas available is undiluted liquefied petroleum gas and in which no licensed plumber or licensed gas fitter is available for appointment as an inspector of gas piping and gas appliances in buildings may appoint a licensed undiluted liquefied petroleum gas installer to inspect gas piping and gas appliances in buildings. The appointing authority of such town shall certify to the board established under section twelve H of chapter twenty-five that the only gas available in such town is undiluted liquefied petroleum gas and that a licensed plumber or licensed gas fitter is not available therein.

If a city or town fails to provide for the appointment of a gas inspector as required by this section, said board shall cause gas inspections to be made therein, so long as such failure continues, by a gas inspector of a city or town within the same county who shall be designated by the board from time to time. The cost of such inspections shall be paid by the city or town which failed to provide for the appointment of a gas inspector.

Added by St.1960, c. 737, § 2. Amended by St.1963, c. 217; St.1964, c. 170; St.1964, c. 312, § 2; St.1966, c. 161.

§ 3Q. Convalescent, nursing, etc., homes; rules and regulations regarding safety of persons and fire prevention

Notwithstanding any other provision of law to the contrary, the provisions of this chapter relative to the safety of persons and the prevention of fire in convalescent or nursing homes, rest homes and charitable homes for the aged licensed under the provisions of section seventy-one of chapter one hundred and eleven, including the regulation of the inspection, materials, construction, alteration and repair of such homes, shall be enforced under rules and regulations promulgated by the department and the state building code commission. Except in the case of new construction addition, alteration, such rules and regulations may provide for the installation of a sprinkler system where, after hearing, the department finds such system necessary for the safety of persons; provided, however, that where a sprinkler system would be unnecessary or impractical because of the location, size or construction of a home or because the home is authorized to contain not more than twenty-five beds, the department may require alternative methods of fire protection. An automatic sprinkler system shall be provided throughout any newly-constructed home, and in the case of any existing home where the licensee proposes an addition or alteration, as defined in the state building code, an automatic sprinkler system shall be installed in the course of such addition or alteration to such extent as the department may direct in accordance with such rules and regulations.

Added by St.1962, c. 630, § 1. Amended by St.1966, c. 614, § 6; St.1968, c. 406; St.1972, c. 802, § 20; St.1977, c. 868, §§ 3, 4.

§ 3R. Apartment houses; exterior doors and locks

At least one of the doors of the main common entryway into every apartment house having more than three apartments shall be so designed or equipped as to close and lock automatically with a lock, including a lock with an electrically-operated striker mechanism, a self-closing door and associated equipment, and such lock, door or equipment shall be of a type approved by the state building code commission. Every door of the main common entryway and every exterior door into every such apartment house, other than the door of such main common entryway which is equipped as provided in the preceding sentence, shall be equipped with a lock of a type approved by said state building code commission; provided, however, that the said commission may, in writing, waive any of the requirements of this section in appropriate cases in which, in its opinion, other security measures are in force which adequately protect the residents of such apartment house. Whoever, being in control of such premises, willfully and knowingly violates the provisions of this section shall be punished by a fine of not more than five hundred dollars.

This section shall not apply to lodging houses, as defined in section twenty-two of chapter one hundred and forty, dormitories of charitable, educational or philanthropic institutions, or projects of housing authorities, as defined in chapter one hundred and twenty-one B.

Added by St.1965, c. 464, § 1. Amended by St.1967, c. 142; St.1967, c. 735, § 1; St.1968, c. 319; St.1969, c. 303; St.1972, c. 802, § 21; St.1974, c. 541, § 13.

§ 3S. Multiple dwellings; posting name and address of owner or agent; penalty

An owner of a dwelling which is rented for residential use, who does not reside therein and who does not employ a manager or agent for such dwelling who resides therein, shall post and maintain or cause to be posted and maintained on such dwelling adjacent to the mailboxes for such dwelling or elsewhere in the interior of such dwelling in a location visible to the residents a notice, not less than twenty square inches in size, bearing his name, address and telephone number. If the owner is a realty trust or partnership, the name, address and telephone number of the managing trustee or partner shall be posted. If the owner is a corporation, the name, address and telephone number of the president of the corporation shall be posted.

Where the owner employs a manager or agent who does not reside in such dwelling, such manager or agent's name, address and telephone number shall also be included in the notice.

Whoever violates the provisions of this section shall be punished by a fine of not more than fifty dollars. Each day during which a violation continues shall constitute a separate offense.

Added by St.1967, c. 260. Amended by St.1972, c. 493.

§ 3T. Safety glazing materials; use in construction of buildings in hazardous locations; definitions for sections 3U and 3V

The following phrases, as used in sections three U and three V shall, unless the context requires otherwise, have the following meanings:

"Safety glazing material", any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets such test requirements as may be adopted by the department shall, insofar as possible, adhere to the American National Standards Institute standard ANSIZ–97.1–1972 after notice and hearing as required by chapter thirty A, and which are so constructed, treated or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material.

"Hazardous locations", means those installations, glazed or to be glazed in commercial and public buildings, known as framed or unframed glass entrance doors; and those installations, glazed or to be glazed in residential buildings and other structures used as dwellings, commercial buildings, and public buildings, known as sliding glass doors, storm doors, shower doors, bathtub enclosures, and fixed glazed panels adjacent to entrance and exit doors which because of their location present a barrier in the normal path traveled by persons going into or out of these buildings, and because of their size and design may be mistaken as means of ingress or egress; and any other installation, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the commissioner may determine after notice and hearing as required by said chapter thirty A, whether or not the glazing in such doors, panels, enclosures and other installations is transparent.

Added by St.1971, c. 837, § 1. Amended by St.1973, c. 353.

§ 3U. Labeling of safety glazing materials

Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the commonwealth shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material on the safety glazing material, or by other suitable means so as to be easily visible and legible. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of section three T.

Such safety glazing labeling shall not be used on other than safety glazing materials.

Added by St.1971, c. 837, § 1.

§ 3V. Penalties for failure to install, etc. safety glazing materials; applicability to employees of violators

Whoever knowingly sells, fabricates, assembles, glazes, installs, consents or causes to be installed glazing materials other than safety glazing materials in, or for use in, any hazardous location shall be punished by a fine of not less than five hundred nor more than ten thousand dollars, or by imprisonment in a jail or house of correction for not more than one year, or both.

The provisions of this section shall not apply to an employee of any person charged with the responsibility of compliance with sections three T and three U.

Added by St.1971, c. 837, § 1.

§ 3W. Conformance of plans and specifications for erection or alteration of public buildings to rules and regulations of board to facilitate use by the physically handicapped as requirement for issuance of certificate of approval

In issuing a certificate of approval for the erection or alteration of a public building under section fifteen, a supervisor of plans shall, in addition to any other requirements of this chapter, determine that the plans and specifications required to be filed under said section fifteen conform to the rules and regulations issued by the board to facilitate the use of public buildings by the physically handicapped, established by section thirteen A of chapter twenty-two, or if a specification of requirements for the erection or alteration of a public building is issued under said section fifteen, such specification shall, in addition to any other requirements of this chapter, require that the aforesaid plans and specifications conform to such rules and regulations.

Added by St.1973, c. 418.

§ 6. Local inspector; duties

The local inspector, immediately upon being informed by report or otherwise that a building or other structure or anything attached thereto or connected therewith in that city or town is dangerous to life or limb or that any building in that city or town is unused, uninhabited or abandoned, and open to the weather, shall inspect the same; and he shall forthwith in writing notify the owner, lessee or mortgagee in possession to remove it or make it safe if it appears to him to be dangerous, or to make it secure if it is unused, uninhabited or abandoned and open to the weather. If it appears that such structure would be especially unsafe in case of fire, it shall be deemed dangerous within the meaning hereof, and the local inspector may affix in a conspicuous place upon its exterior walls a notice of its dangerous condition, which shall not be removed or defaced without authority from him.

Amended by St.1946, c. 363, § 4; St.1949, c. 541, § 1; St.1957, c. 214, § 1; St.1972, c. 802, § 23.

§ 7. Removal or making structure safe; putting up fence

Any person so notified shall be allowed until twelve o'clock noon of the day following the service of the notice in which to begin to remove such structure or make it safe, or to make it secure, and he shall employ sufficient labor speedily to make it safe or remove it or to make it secure; but if the public safety so requires and if the aldermen or selectmen so order, the inspector of buildings may immediately enter upon the premises with the necessary workmen and assistants and cause such unsafe structure to be made safe or taken down without delay, and a proper fence put up for the protection of passers-by, or to be made secure. If such a building or structure is taken down or removed, the lot shall be levelled to uniform grade by a proper sanitary fill to cover any cellar or foundation hole and any rubble not removed.

Amended by St.1949, c. 156, § 2; St.1957, c. 214, § 2.

§ 8. Failure to remove or make structure safe; survey board; survey report

If an owner, lessee or mortgagee in possession of such unsafe structure refuses or neglects to comply with the requirements of such notice within the time limited, and such structure is not made safe or taken down as therein ordered, or made secure, a careful survey of the premises shall be made by a board consisting in a city of the city engineer, the head of the fire department, as such term is defined in section one of chapter one hundred and forty-eight, and one disinterested person to be appointed by the local inspector, and in a town of a surveyor, the head of the fire department and one disinterested person to be appointed by the local inspector. If there is no city engineer in such city or no head of the fire department in such city or town, the mayor or selectmen shall designate one or more officers or other suitable persons in place of the officers so named as members of said board. A written report of such survey shall be made, and a copy thereof served on such owner, lessee or mortgagee in possession.

Amended by St.1945, c. 697, § 1; St.1949, c. 541, § 2; St.1957, c. 214, § 3; St.1972, c. 802, § 24.

§ 9. Dangerous or abandoned structures removed or made safe by local inspector; lien for costs; penalty; use of structure

If such report declares such structure to be dangerous or to be unused, uninhabited or abandoned, and open to the weather, and if the owner, lessee or mortgagee in possession continues such refusal or neglect, the local inspector shall cause it to be made safe or taken down or to be made secure, and, if the public safety so requires, said local inspector may at once enter the structure, the land on which it stands or the abutting land or buildings, with such assistance as he may require, and secure or remove the same, and may remove and evict, under the pertinent provisions of chapter two hundred thirty-nine or otherwise, any tenant or occupant thereof, and may erect such protection for the public by proper fence or otherwise as may be necessary, and for this purpose may close a public highway. In the case of such demolition, the local inspector shall cause such lot to be levelled to uniform grade by a proper sanitary fill. The costs and charges incurred shall constitute a lien upon the land upon which the structure is located and shall be enforced in an action of contract, and such owner, lessee or mortgagee in possession shall, for every day's continuance of such refusal or neglect after being so notified, be punished by a fine of not less than one hundred dollars. The provisions of the second paragraph of section three A of chapter one hundred and thirty-nine, relative to liens for such debt and the collection of claims for such debt, shall apply to any debt referred to in this section, except that the local inspector shall act hereunder in place of the mayor or board of selectmen. During the time such order is in effect it shall be unlawful to use or occupy such structure or any portion thereof for any purpose.

Amended by St.1945, c. 697, § 2; St.1949, c. 156, § 5; St.1949, c. 541, § 3; St.1957, c. 214, § 4; St.1959, c. 75; St.1970, c. 649, § 5; St.1972, c. 802, § 25; St.1979, ch. 479.

§ 12. Restraint of construction, repair, or use of a structure; order for removal

The supreme judicial or superior court may restrain the construction, alteration, repair, maintenance or use of a building or structure in violation of any ordinance or by-law of a city or town or of the state building code and order its removal or abatement as a nuisance; and may restrain the further construction, alteration or repair, maintenance, use or occupancy of a building or structure reported to be dangerous, under a survey authorized by section eight, until the determination of the matter, as provided in section ten.

Amended by St.1945, c. 697, § 4; St.1972, c. 802, § 27.

§ 21D. Auxiliary emergency lighting systems; exit signs; rules and regulations

The owner, lessee or mortgagee in possession of any multiple dwelling of ten or more units shall equip such dwelling with an auxiliary emergency lighting system independent of the conventional lighting system, and lighted signs indicating both a primary and secondary means of egress by a diagram or symbol so as to assure recognition by all persons, regardless of their English-speaking ability.

The commissioner shall make and promulgate, and from time to time may alter, amend and repeal, rules and regulations relative to the standards, installation and maintenance of emergency lighting systems and exit signs required by this section. Such regulations shall include but not be limited to specifications with respect to the degree of illumination and the location of emergency lighting systems, and the degree of illumination and the location of, and the symbolism in, exit signs.

Added by St.1972, c. 391, § 1.

§ 22. Articles placed on fire escapes

Any article placed upon a fire escape or an outside means of egress of any building is hereby declared a common nuisance. Any court authorized to issue warrants in criminal cases may, upon complaint under oath made by any police officer that any article is placed or maintained upon a fire escape or outside means of egress of any building, issue a warrant to bring such article when found before a court having jurisdiction of the same, and all articles seized under the authority of such a warrant shall be disposed of in like manner as gaming implements seized under chapter two hundred and seventy-six. Any owner, lessee, tenant or occupant of any building who maintains or permits to remain upon any fire escape or outside means of egress of any building any article for more than twenty minutes shall be punished by a fine of not more than one hundred dollars. The existence of any article upon a fire escape or outside means of egress of any building shall be prima facie evidence that such article was so placed, maintained or permitted to remain by the occupant of the premises having access from said building to said fire escape or outside means of egress.

§ 23. Articles obstructing stairways

Every stairway of every building shall be kept free and unobstructed, and any person who permits any article to remain in any stairway of any building in such a manner as may impede the egress of any person lawfully in said building or the ingress of any person lawfully entitled to enter said building shall be punished by a fine of not more than five hundred dollars. The existence of any article in any such stairway in any building shall be prima facie evidence that it was placed or permitted to remain therein by the owner, lessee, tenant or occupant of the building.

ELEVATORS

§ 64. Periodic inspections and tests; reports

All elevators shall be thoroughly inspected and a practical test made of the safety devices required therefor at intervals of not more than one year and at such other times as may be deemed necessary by the inspector or local inspector. The inspection and practical test shall be made by a licensed elevator construction man, maintenance or repairmen in the presence of an inspector or local inspector having jurisdiction. The owner or person in control of a building in which the elevator is located shall arrange for such inspection and practical test within six months from the time of notice from the inspector or local inspector having jurisdiction thereof. Except in the city of Boston, within ten days after the inspection, said inspector or local inspector shall file a complete written report of all changes and defects in apparatus or equipment to the commissioner of public safety upon forms to be furnished by him. In the city of Boston, within ten days after the inspection, said inspector or local inspector shall file a complete written report of all changes and defects in apparatus or equipment to the Boston building commissioner upon forms furnished by him.

Amended by St.1963, c. 616, § 3; St.1966, c. 157; St.1972, c. 802, § 46.

§ 65. Certificate or notice as to safety and construction; posting; removal; prohibition of use of elevator

If in the judgment of any inspector or local inspector having jurisdiction thereof an elevator is safe, and if the elevator has been constructed in the manner required by law or by the regulations of the board of elevator regulations or the state building code, the inspector shall issue a certificate to that effect to the owner of the elevator or to the person in charge thereof, who shall post the certificate in a conspicuous place in or near the cab or car of such elevator. If such elevator is judged unsafe, the inspector or local inspector shall immediately post conspicuously upon the entrance or door of the cab or car of such elevator, or upon the elevator, a notice of its dangerous condition, and shall prohibit the use of the elevator until it has been made safe to his satisfaction. No person shall remove such notice or operate such elevator until the inspector or local inspector has issued his certificate as aforesaid.

Amended by St.1972, c. 802, § 47.

CHAPTER 144

TENEMENT HOUSES IN CITIES

GENERAL PROVISIONS

Sec.
2. Definitions; tense; gender.

REQUIREMENTS AND REMEDIES

95. Service of notices or orders.
95A. Attorney for service of process on non-resident; filing of appointment; registration of true names of code violators.
95B. Failure to appoint attorney by nonresident; effect; service of process.
95C. Person defined.

GENERAL PROVISIONS

§ 2. Definitions; tense; gender

The following words used in this chapter shall have the following meanings:

"Acceptance of this chapter" shall include the acceptance of corresponding provisions of earlier laws.

"Alcove", any part of a room partitioned off by fixed or movable partitions of any material, by curtains or portieres, or by other contrivance or device, and intended or designed to be used for living purposes.

"Basement", a story partly under ground but having not less than one half its height above the level of the curb, and also having one half its height in every part above the level of the adjoining ground.

"Cellar", a story more than one half below the level of the curb or adjoining ground.

"Corner lot", a lot situated at the junction or intersection of two streets each not less than sixteen feet in width, but any lot the outer angle of which is over one hundred and twenty-five degrees shall not be considered a corner lot. Any portion of the width of the front of such lot distant more than fifty feet and any portion of the depth of such lot distant more than one hundred feet from such a junction or intersection shall not be regarded as part of a corner lot, but shall be subject to the provisions of this chapter respecting interior lots.

"Court", an open unoccupied space, other than a yard or front yard, on the same lot with a tenement house. A court extending to the street, yard, front yard or side yard is an "outer court". A court not so extending is an "inner court".

"Existing", existing at the time of the acceptance of this chapter or corresponding provisions of earlier laws.

"First class construction". A tenement house of first class construction is one constructed of fireproof material throughout, with floors built of steel or re-enforced concrete beams, filled in between with terra cotta or other masonry arches or with concrete or re-enforced concrete slabs; wood may be used only for under and upper floors, windows and door frames, sashes, doors, interior finish, hand furrings bedded in mortar. There shall be no air space between the top of any floor arches and the floor boarding.

"First story", the lowest story, the ceiling of which is six feet or more above both the level of the curb and the level of the adjacent ground. In determining the height of any building by stories, the stories thereof beginning with such first story shall be numbered upward.

"Front" of a lot, that boundary line which borders on the street. In the case of a corner lot the owner may elect by statement on his plans either street boundary line as the front.

"Half story" or "attic", any story included in the roof, the cubic contents of which, exclusive of cockloft or blind attic not exceeding three feet in height at the highest point, is not more than sixty per cent of the cubic contents of the first story.

"Height", the perpendicular distance measured in a straight line from the curb level, or from the finished grade line of the lot where such grade is higher than the curb, to the mean height above the eaves of any sloping roof, and to the highest point of the roof beams in the case of flat roofs, except that in the case of flat roofs a parapet exceeding three feet in height shall be considered a part of the height of the building, the measurements in all cases to be taken through the centre of the street front of the house. Where a building is on a corner lot and there is more than one grade or curb level, the measurements shall be taken from the centre of the front on the street having the lowest elevation.

"Interior lot", any lot other than a corner lot.

"Lot", the plot of ground covered by and adjacent to a tenement house or dwelling house and devoted exclusively to the purposes of such house, as shown by the plan of such lot furnished to the building department pursuant to section eighty-five.

"Nuisance" includes all public nuisances as known at common law or in equity jurisprudence; and furthermore, whatever is dangerous to human life or detrimental to health, whatever building or erection, or part or cellar thereof, is overcrowded with occupants or is not provided with adequate ingress or egress to and from the same or apartments thereof, or is not sufficiently supported, ventilated, sewered, drained, cleaned or lighted in reference to its or their intended or actual use; and whatever renders the air or human food or drink unwholesome, are also severally in contemplation of this chapter, nuisances; and such nuisances are hereby declared unlawful.

"Occupied spaces". Porches, platforms, except those on the first story when the basement is not occupied or designed or intended to be occupied for habitation, and outside stairways, except fire escapes and steps leading to the first story, shall be considered as part of the building and not as part of the yard or courts or unoccupied areas.

"Public hall", a hall, corridor or passageway not within an apartment.

"Rear" of a lot, the side opposite to the front. In the case of a corner lot with streets on three sides, or of a triangular or irregularly shaped lot abutting on two streets at their junction or intersection, the rear shall be a side not bordering on a street.

"Second class construction". A tenement house of second class construction is one of which the exterior and party walls are fireproof and conform to the requirements of first class construction as defined by law or by ordinance of the city in which it is situated.

"Stair hall" includes the stairs, stair landings and those parts of the public halls through which it is necessary to pass in going from the entrance floor to the roof.

"Street" includes any right of way dedicated to public use, any public alley, or railroad right of way sixteen feet or more in width, any cemetery or public park.

"Tenement house", any house or building, or part thereof, which is rented, leased, let or hired out, to be occupied, or is occupied, or intended, arranged or designed to be occupied as the home or residence of two or more families (a family may consist of one or more persons), living independently of each other and doing their cooking on the premises and having a common right in the halls, stairways, yard, courts, cellar, sinks, water closets or privies, or any of them. Where the occupants of dwelling houses contiguous and vertically divided, each occupied or intended, arranged or designed to be occupied as the home or residence of one family or more, have a common right in or use in common the halls, stairways, yards, cellars, sinks, water closets or privies, or any of them, such dwelling houses shall be deemed to be tenement houses and shall be subject to this chapter.

"Thereafter", after the acceptance of this chapter or corresponding provisions of earlier laws.

"Third class construction". A tenement house of third class construction is one of which the exterior walls or parts thereof are of combustible materials and do not conform to the requirements of first class construction.

"Yard", an open unoccupied space on the same lot with the tenement house between the extreme rear line of the house and the extreme rear line of the lot. A "front yard" is an open unoccupied space between the front line of the house and the front line of the lot. A "side yard" is an open unoccupied space between the side line of the main part of the house and the side line of the lot and shall be deemed an outer court on the lot line.

Words used in the present tense include the future; words in the masculine gender include feminine and neuter; the word "shall" is always mandatory, and denotes that the house shall be maintained in all respects according to the mandate so long as it continues to be a tenement house; whenever the words "charter", "ordinances", "regulations", "building department", "building inspector", "health department", "board of health", "department charged with the enforcement of this chapter", or "city solicitor" occur in this chapter they shall be construed as if followed by the words "of the city in which the tenement house is situated"; wherever the words "is occupied" are used in this chapter applying to any building, such words shall be construed as if followed by the words "or is intended, arranged or designed to be occupied".

REQUIREMENTS AND REMEDIES

§ 95. Service of notices or orders

Unless otherwise provided in this chapter, every notice or order in relation to a tenement house shall be served ten days before the time for doing the thing in relation to which it is issued. The service of a notice or order as aforesaid shall be made by the delivery of an attested copy in hand to the owner or his agent, or by leaving an attested copy at the last or usual place of abode of the owner or agent.

Amended by St.1966, c. 707, § 7.

§ 95A. Attorney for service of process on non-resident; filing of appointment; registration of true names of code violators

Any person owning a tenement within the definition of section two of chapter one hundred and forty-four of the General Laws and including tenements within the city of Boston and including rooming houses, who does not reside therein, shall file in writing with the city or town clerk in the city or town where any such structure may be found the name and address of an individual residing in such city or town to be his true and lawful attorney upon whom all lawful processes in any action or proceeding against him may be served. The owner of any such tenement which is posted for a code violation shall forthwith register his true name with the city or town clerk.

Added by St.1966, c. 707, § 8.

§ 95B. Failure to appoint attorney by non-resident; effect; service of process

If any person fails to comply with the requirements of section ninety-five A he shall be deemed to have appointed said city or town clerk as his agent as above, and service upon any such clerk shall have the same force and effect as service upon such person's duly constituted appointee.

When legal process against any such person is served upon such clerk, a copy of said process shall also forthwith be sent by the plaintiff or his attorney to the defendant at his last known address or to the address last listed for the owner of said premises on the assessors list in said city or town.

Such copy shall be sent by registered mail with return receipt requested. The plaintiff's affidavit of compliance herewith, and the defendant's return receipt, if received by the plaintiff, shall be filed in the court where the case is pending or where the service was issued on or before the return day of the process or within such further time as the court may allow.

Added by St.1966, c. 707, § 8.

§ 95C. Person defined

"Person", as used in sections ninety-five A and ninety-five B shall include but not be restricted to any individual, or individuals, as tenants in common, joint tenants, tenants by the entirety or otherwise; any corporation or business trust; any trustee; any partnership; any receiver or trustee in bankruptcy; any tenant having a leasehold interest for a period in excess of ten years; any mortgagee in possession.

Added by St.1966, c. 707, § 8.

CHAPTER 145

TENEMENT HOUSES IN TOWNS

REQUIREMENTS AND REMEDIES

Sec.

59. Notice of person controlling tenements; filing; contents; fees.

60. Service of notices or orders.

60A. Attorney for service of process on non-resident; filing of appointment; registration of true names of code violators.

60B. Failure to appoint attorney by non-resident; effect; service of process.

60C. Person defined.

REQUIREMENTS AND REMEDIES

§ 59. Notice of person controlling tenements; filing; contents; fees

The owner of a tenement house and every lessee of the whole house or of two or more tenements therein, or the agent of the owner or other person having control of a tenement house, shall annually during the month of April file in the office of the town clerk a notice containing his name and address, and also a description of the property, by street number or otherwise, as the case may be, in such manner as will enable the board of health and building inspector easily to find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. Such owner shall pay to the said clerk at the time of filing the said notice and description the fee provided by clause (74) of section thirty-four of chapter two hundred and sixty-two.

Amended by St.1948, c. 550, § 26; St.1966, c. 707, § 10.

§ 60. Service of notices or orders

Unless otherwise provided in this chapter, every notice or order in relation to a tenement house shall be served ten days before the time for doing the thing in relation to which it is issued. The service of notices or orders as aforesaid shall be made by the delivery of an attested copy in hand to the owner or his agent, duly registered as provided in section fifty-nine, or by leaving an attested copy at the last or usual place of abode of the owner or agent.

Amended by St.1966, c. 707, § 11.

§ 60A. Attorney for service of process on non-resident; filing of appointment; registration of true names of code violators

Any person owning a tenement within the definition of section two of chapter one hundred and forty-four of the General Laws and including tenements within the city of Boston and including rooming houses, who does not reside therein, shall file in writing with the city or town clerk in the city or town where any such structure may be found the name and address of an individual residing in such city or town to be his true and lawful attorney upon whom all lawful processes in any action or proceeding against him may be served. The owner of any such tenement which is posted for a code violation shall forthwith register his true name with the city or town clerk.

Added by St.1966, c. 707, § 12.

§ 60B. Failure to appoint attorney by non-resident; effect; service of process

If any person fails to comply with the requirements of section sixty A he shall be deemed to have appointed said city or town clerk as his agent as above, and service upon any such clerk shall have the same force and effect as service upon such person's duly constituted appointee.

When legal process against any such person is served upon such clerk, a copy of said process shall also forthwith be sent by the plaintiff or his attorney to the defendant at his last known address or to the address last listed for the owner of said premises on the assessors list in said city or town.

Such copy shall be sent by registered mail with return receipt requested. The plaintiff's affidavit of compliance herewith, and the defendant's return receipt, if received by the plaintiff, shall be filed in the court where the case is pending or where the service was issued on or before the return day of the process or within such further time as the court may allow.

Added by St.1966, c. 707, § 12.

§ 60C. Person defined

"Person", as used in sections sixty A and sixty B shall include but not be restricted to any individual, or individuals, as tenants in common, joint tenants, tenants by the entirety or otherwise; any corporation or business trust; any trustee; any partnership; any receiver or trustee in bankruptcy; any tenant having a leasehold interest for a period in excess of ten years; any mortgagee in possession.

Added by St.1966, c. 707, § 12.

CHAPTER 146

INSPECTION OF BOILERS, AIR TANKS, ETC. LICENSES OF ENGINEERS, FIREMEN, AND OPERATORS OF HOISTING MACHINERY

DUTIES OF BOARD OF BOILER RULES

Sec.
2. Rules in general; prescription of tests; form of certificate of inspection; assistance of attorney general.

DUTIES OF BOARD OF BOILER RULES

§ 2. Rules in general; prescription of tests; form of certificate of inspection; assistance of attorney general

The board shall formulate rules or adopt rules formulated by a recognized engineering organization, for the construction, installation and inspection of steam boilers and power reactor vessels and piping as used in atomic energy installations and for ascertaining the safe working pressure to be carried therein; prescribe tests, if it deems it necessary, to ascertain the qualities of materials used in the construction of boilers, power reactor vessels and piping; formulate rules regulating the construction and sizes of safety valves for boilers of different sizes and pressures, appliances for indicating the pressure of steam and the level of water in the boiler or power reactor vessel, and such other appliances as the board may deem necessary to safety in operating steam boilers or power reactor vessels; and make a standard form of certificate of inspection. The attorney general shall assist the board in framing the rules. Such rules shall be transmitted to the commissioner and be by him filed in the office of the state secretary, and when so filed shall have the force of law.

Amended by St.1941, c. 459; St.1946, c. 336, § 1; St.1958, c. 525.

CHAPTER 147

STATE AND OTHER POLICE, AND CERTAIN POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC SAFETY

SPECIAL POLICE OFFICERS

Sec.
10C. Employees of department of public health and its institutions.
10E. Soldiers' homes; special police officers; employees; appointment by commissioner.
10*I*. Middlesex County Sanitorium; special police officers; appointment.

POLICE MATRONS

21. "Police station" and "station" defined.

POWER LAWNMOWERS

56. Sale; safety devices required; rules and regulations; penalty.

SPECIAL POLICE OFFICERS

§ 10C. Employees of department of public health and its institutions

The commissioner may, upon petition of the commissioner of public health, appoint as special police officers employees of the department of public health or employees of the various institutions under its jurisdiction, who shall have the same power to make arrests as the state police for any criminal offence committed in or upon the lands or structures within the charge of the department of public health or the various institutions under its jurisdiction. Such special police officers shall be sworn before a justice of the peace or notary public who shall make a return thereof to the department upon a form provided by it. Upon receipt of said return the department shall issue a license to each person designated to act as a special police officer, and such license shall, in any court of the commonwealth, be competent evidence of the validity of the appointment of the person named therein and of his authority to act as such special police officer. A special police officer shall hold his office until his license expires or is revoked by the commissioner, or until the petitioner files a notice with the department that the services of such officer are no longer required. The commissioner may provide that the license and any renewal thereof shall expire on the anniversary of the birth of the person named therein not less than one nor more than two years following the date of issue. They shall report to the commissioner as to their official acts at such times and in such manner as he may require. They shall serve without pay, except their regular compensation as employees of the department of public health or the various institutions under its jurisdiction, and they shall receive no fees for services or return of any criminal process.

Added by St.1956, c. 231. Amended by St.1969, c. 388.

§ 10E. Soldiers' homes; special police officers; employees; appointment by commissioner

The commissioner may, upon petition of the board of trustees of the Soldiers' Home in Holyoke, or the Soldiers' Home in Massachusetts, as the case may be, appoint as special police officers employees of said institutions, who shall have the same power to make arrests as the state police for any criminal offence committed in or upon lands or structures within the charge of said boards of trustees, respectively. Such special police officers shall be sworn before a justice of the peace or notary public who shall make a return thereof to the department upon a form provided by it. Upon receipt of said return the department shall issue a license to each person designated to act as a special police officer, and such license shall, in any court of the commonwealth, be competent evidence of the validity of the appointment of the person named therein and of his authority to act as such special police officer. A special police officer shall hold his office until his license expires or is revoked by the commissioner, or until the petitioner files a notice with the department that the services of such officer are no longer required. The commissioner may provide that the license or any renewal thereof shall expire on the anniversary of the date of birth of the person named therein not less than one nor more than two years following the date of issue. They shall report to the commissioner as to their official acts at such times and in such manner as he may require. They shall serve without pay, except their regular compensation as employees of said institutions, and they shall receive no fees for services or return of any criminal process.

Added by St.1957, c. 731. Amended by St.1969, c. 387.

§ 10I. Middlesex County Sanitorium; special police officers; appointment

The commissioner of public safety may, upon petition of the board of trustees of the Middlesex County Sanatorium, appoint as special police officers employees of said institution, who shall have the same power to make arrests as regular police officers for any criminal offence committed in or upon lands, or structures owned, used or occupied by said sanatorium. Such special police officers shall be sworn before a justice of the peace or notary public who shall make a return thereof to the department upon a form provided by it.

Upon receipt of said return the department shall issue a license to each person designated to act as a special police officer, and such license shall, in any court of the commonwealth, be competent evidence of the validity of the appointment of the person named therein and of his authority to act as such special police officer. A special police officer shall hold his office until his license expires or is revoked by the commissioner, or until the petitioner files a notice with the department that the services of such officer are no longer required. The commissioner may provide that the license and any renewal thereof shall expire on the anniversary of the birth of the person named therein not less than one nor more than two years following the date of issue. Such special police officer shall report to the commissioner as to his official acts at such times and in such manner as the commissioner may require. Such special police officer shall serve without pay, except his regular compensation as an employee of said institution, and he shall receive no fees for services or return of any criminal process.

Added by St.1969, c. 420.

POLICE MATRONS

§ 21. "Police station" and "station" defined

The words "police station" or "station" in the three preceding sections shall mean any place in which persons are temporarily confined under arrest.

POWER LAWNMOWERS

§ 56. Sale; safety devices required; rules and regulations; penalty

Every motor-driven implement or machine used for the purpose of cutting grass sold, offered for sale, or held with intent to sell in the commonwealth shall be equipped with a safety device designed and attached by the manufacturer in accordance with the specifications and requirements established by the commissioner of public safety for the purpose of protecting the operator thereof and any other person from objects which may be ejected or propelled from the blade area of such implement or machine. Said commissioner may promulgate such rules and regulations as may be necessary to enforce the provisions of this section. Whoever violates any provisions of this section or of any rule or regulation promulgated hereunder shall be punished by a fine of not more than five hundred dollars for each offense.

Amended by St.1972, c. 429, § 1.

CHAPTER 148

FIRE PREVENTION

Sec.

1. Definitions.
4. Persons authorized to enter and inspect premises; inspections of institutions; reports.
5. Investigation of premises and alleys as to fire hazards; remedy of conditions; lien; penalty.
5A. Portable space heaters in dwellings; prohibition of use.
10C. Alteration, repair or installation of oil burners; necessity of certificate; exceptions.
10H. Firms or corporations; licensing requirements.
23. Keeping and use of inflammable fluids; permit; fee.
23A. Inflammable anti-freeze in hydrants.
25A. Secondhand space heaters; unvented space heaters.
25B. Buildings used for human habitation; use of space heaters.
25D. Manufacture and sale of children's clothing and sleepwear; rules and regulations.
26B. Automatic fire warning and smoke detection systems in certain buildings; enforcement; appeals.
26C. Certain public accommodations; automatic smoke or heat detectors.

§ 1. Definitions

In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:—

"Commissioner", the commissioner of public safety of the commonwealth.

"Department", the department of public safety.

"Division", the division of fire prevention of the department of public safety.

"Head of the fire department", the chief executive officer of the fire department in a city, town or fire district having such an officer, otherwise the fire commissioner, board of fire commissioners or fire engineers, or commissioner of public safety; and, in towns not having a fire department, the chief engineer, if any, otherwise the chairman of the board of selectmen.

"Inspector", an inspector or police officer of the department of public safety.

"Local licensing authority", in towns, including those towns which have adopted a town management form of government, the board of selectmen; in Boston, the board of street commissioners; in cities having adopted one of the plans of government provided in chapter forty-three, the city council, or the licensing board or commission in such cities wherein such a board or commission is authorized by statute or ordinance to grant licenses under this chapter; in other cities, the board of aldermen, or the licensing board or commission in cities wherein such a board or commission is authorized by statute or ordinance to grant licenses under this chapter; provided, that in any town having over twenty thousand inhabitants, an unpaid licensing board of three members may be appointed or designated by the board of selectmen to act as the licensing authority in issuing licenses for garages for not more than two automobiles or motor vehicles. In case the board of aldermen or city council constitute such authority, any hearing required by this chapter may be held before a committee thereof.

"Marshal", the state fire marshal.

"Board", the board of fire prevention regulations established under section fourteen of chapter twenty-two.

"Building", a combination of any materials, whether portable or fixed, having a roof, to form a structure for the shelter of persons, animals or property. For the purpose of this definition "roof" shall include an awning or any similar covering, whether or not permanent in nature. The word "building" shall be construed where the context allows as though followed by the words "or part or parts thereof".

"Structure", a combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, mast for radio antenna or the like. The word "structure" shall be construed, where the context allows, as though followed by the words "or part or parts thereof".

Amended by St.1932, c. 102; St.1945, c. 470; St.1953, c. 230, § 1.

§ 4. Persons authorized to enter and inspect premises; inspections of institutions; reports

The marshal, an inspector, the head of the fire department, or any person to whom the marshal or the head of the fire department may delegate the authority, may, in the performance of the duties imposed by this chapter, or in furtherance of the purpose of any provision of any law, ordinance or by-law relating to the subject matter of this chapter, or of any rule or regulation of the board of fire prevention regulations, established under section fourteen of chapter twenty-two, in this chapter referred to as the board, or any order of the marshal or head of the fire department, enter at any reasonable hour any building or other premises, or any ship or vessel, to make inspection or investigation, without being held or deemed to be guilty of trespass.

The marshal or the head of a fire department to whom he may delegate authority, shall make an inspection every three months of institutions as defined by the state building code, licensed by and under the supervision of the department of public health, or licensed by the department of public welfare, and shall make a report of such inspection to each such department on forms submitted to the marshal by such department for this purpose. Said marshal of such head of a fire department shall also make an inspection every three months of the premises specified in innholder's licenses issued under chapter one hundred and forty.

Amended by St.1945, c. 710, § 2; St.1955, c. 662, § 6; St.1959, c. 446, § 5; St.1964, c. 123; St.1972, c. 802, § 54.

§ 5. Investigation of premises and alleys as to fire hazards; remedy of conditions; lien; penalty

The marshal, the head of the fire department or any person to whom the marshal or the head of the fire department may delegate his authority in writing may, and upon complaint of a person having an interest in any building or premises or property adjacent thereto, shall, at any reasonable hour, enter into buildings and upon premises, which term for the purposes of the remainder of this section shall include alleys adjacent thereto, within their jurisdiction and make an investigation as to the existence of conditions likely to cause fire. They shall, in writing, order such conditions to be remedied, and whenever such officers or persons find in any building or upon any premises any accumulation of combustible rubbish including, but not limited to, waste paper, rags, cardboard, string, packing material, sawdust, shavings, sticks, waste leather or rubber, broken boxes or barrels or any other refuse or useable materials that is or may become dangerous as a fire menace or as an obstacle to easy ingress into or egress from such buildings or premises, they shall, in writing, order the same to be removed or such conditions to be remedied. Notice of such order shall be served upon the owner, occupant or his authorized agent by a member of the fire or police department. If said order is not complied with within twenty-four hours, the person making such order, or any person designated by him, may enter into such building or upon such premises and remove such refuse or any useable materials or abate such conditions at the expense of such owner or occupant. Any expense so incurred by or on behalf of the commonwealth or of any city or town, shall be a lien upon such building or premises, effective upon the filing in the proper registry of deeds of a claim thereof signed by such person and setting forth the amount for which the lien is claimed; and the lien shall be enforced within the time and in the manner provided for the collection of taxes upon real estate. Any such owner or occupant who fails or refuses to comply with said order shall be punished by a fine of not more than fifty dollars for each consecutive forty-eight hours during which such failure or refusal to comply continues.

Amended by St.1945, c. 463; St.1962, c. 456; St.1979, c. 516.

§ 5A. Portable space heaters in dwellings; prohibition of use

No person shall use or allow to be used a portable wick-type space heater in any building which is used in whole or in part for human habitation. Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1962, c. 636.

§ 10C. Alteration, repair or installation of oil burners; necessity of certificate; exceptions

No person shall alter, repair or install any oil burning equipment or any of the appurtenances thereto, except for electrical wiring and connections, as defined by rules and regulations promulgated under the provisions of section ten governing the construction, installation and operation of oil burning equipment and the keeping, storage and use of fuel oil or other inflammable products used in connection therewith, unless he holds a certificate granted by an examiner for the certification of oil burner technicians. Notwithstanding the provisions of the preceding sentence, the cleaning of an oil burner strainer or nozzle or the cleaning or replacement of a photo cell, in any building or structure by the owner or manager thereof or by any regular employee of such owner or manager in a building or structure owned or managed by his employer, may be done without the holding by such owner, manager or employee of a certificate as an oil burner technician.

Added by St.1964, c. 680, § 2.

§ 10H. Firms or corporations; licensing requirements

No firm or corporation engaged in the business of altering, repairing or installing oil burning equipment shall be required to hold a certificate as an oil burner technician; provided that such work is performed for them by persons certified as oil burner technicians.

Added by St.1964, c. 680, § 2.

§ 23. Keeping and use of inflammable fluids; permit; fee

Except as otherwise provided by rules and regulations of the board of fire prevention regulations, no volatile inflammable fluid except an amount not exceeding one quart contained in an approved safety can and no non-volatile inflammable fluid except an amount not exceeding ten gallons for domestic use shall be kept, used or stored in any part of any building used for habitation, and no volatile inflammable fluid in quantity exceeding one gallon contained in an approved safety can, and no non-volatile inflammable fluid in quantity exceeding thirty gallons, shall be kept, used or stored, except in the tank of an automobile, motor boat or stationary engine, within fifty feet of any building used for habitation, unless a permit has first been obtained therefor from the head of the fire department under such terms and conditions as he may prescribe. A fee of not more than fifty cents may be charged for any permit granted under the authority of this section.

Added by St.1935, c. 123, § 2. Amended by St.1964, c. 155.

§ 23A. Inflammable anti-freeze in hydrants

No inflammable fluid shall be used as an anti-freeze mixture in hydrants used to convey water for extinguishing fires.

Added by St.1948, c. 188.

§ 25A. Secondhand space heaters; unvented space heaters

No person shall sell, offer for sale or install a secondhand space heater, or a secondhand portable stove which uses kerosene, range oil or number one fuel oil for fuel. No person shall install or use in any building which is used in whole or in part for human habitation an unvented space heater which uses gas or oil as a fuel. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1962, c. 688, § 1.

§ 25B. Buildings used for human habitation; use of space heaters

On and after July first, nineteen hundred and sixty-five, no person shall use or allow to be used a space heater in any building which is used in whole or in part for human habitation. As used in this section, "space heater" includes portable space heater, parlor heater, cabinet heater, room heater and any similar heater having a barometric fed fuel control and its fuel supply tank located less than forty-two inches from the center of the burner and means the type of heating appliance adapted for burning kerosene, range oil or number one fuel oil and used principally for the heating of the space in and adjacent to that in which such appliance is located. Whoever violates any provision of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1962, c. 688, § 2.

§ 25D. Manufacture and sale of children's clothing and sleepwear; rules and regulations

The board shall make rules and regulations relating to the manufacture and sale of sleepwear and clothing for children up to and including size fourteen, which rules and regulations may specifically prohibit the sale or manufacture of any such clothing or sleepwear which it deems to be a fire hazard.

Added by St.1973, c. 648.

§ 26B. Automatic fire warning and smoke detection systems in certain buildings; enforcement; appeals

Every building or structure not exceeding seventy feet in height above the mean grade erected or substantially altered to be occupied for residential purposes shall be protected with an approved automatic fire warning system in accordance with the provisions of the state building code. Such system shall include the features of automatic smoke detection in conjunction with the approved fire detection devices.

The head of the fire department as defined in section one shall enforce the provisions of this section.

Whoever is aggrieved by the head of the fire department's interpretation, order, requirement, direction or failure to act under the provisions of this section, may, within forty-five days after the service of notice thereof, appeal from such interpretation, order, requirement, direction, or failure to act, to the board of appeals as provided in the state building code and section twenty-three of chapter twenty-three B.

Added by St.1974, c. 214, § 1. Amended by St.1975, c. 676, § 2.

§ 26C. Certain public accommodations; automatic smoke or heat detectors

In any city or town which accepts this section, apartment houses containing six or more dwelling units, hotels, boarding or lodging houses, or family hotels which are not regulated by sections twenty-six A and twenty-six B shall be equipped with an automatic smoke or heat detector in each dwelling unit and each hallway floor.

The head of the fire department as defined in section one shall enforce the provisions of this section.

Added by St.1975, c. 710. Amended by St.1977, c. 962.

TITLE XXI

LABOR AND INDUSTRIES

CHAPTER 149

LABOR AND INDUSTRIES

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DUTIES AND POWERS OF DEPARTMENT OF LABOR AND INDUSTRIES

§ 4. Reports of diseases

The department shall promptly report to the department of public health all cases of disease in industrial establishments affecting the health of the community.

§ 5. Investigations of industrial conditions; complaints; prosecutions

The department may investigate conditions existing in any line of industry, and such investigations may be extended outside of the commonwealth to procure information to promote industrial development or to improve industrial conditions. It shall receive all complaints concerning conditions existing in any industry carried on in the commonwealth, or concerning alleged violations of any laws enforced under its direction, and shall thereupon make or direct all needful and appropriate investigations and prosecutions.

§ 6. Safety devices and means to prevent accidents and diseases generally; fees for structural painting

It shall investigate from time to time employments and places of employment, other than places of employment of persons engaged in domestic service in the home of the employer, and determine what suitable safety devices or other reasonable means or requirements for the prevention of accidents shall be adopted or followed in any or all such employments or places of employment; and also shall determine what suitable devices or other reasonable means or requirements for the prevention of industrial or occupational diseases shall be adopted or followed in any or all such employments or places of employment; and shall make reasonable rules, regulations and orders for the prevention of accidents and the prevention of industrial or occupational diseases, and rules and regulations pertaining to structural painting made hereunder may provide for the payment of reasonable fees.

The rules and regulations for suitable safety devices or other reasonable means or requirements for the prevention of accidents shall also be applicable to self-employed and individual contractors who themselves work at the trade as well as to employees.

Whoever violates any rule, regulation or requirement made by the department under authority hereof shall be punished by a fine of not more than two hundred and fifty dollars for each offense. The department or its representative or any person aggrieved, any interested party or any officer of any labor union or association, whether incorporated or otherwise, may file a written complaint with the district court in the jurisdiction of which the violation occurs.

The provisions of this section and of sections three and five shall not apply to any employment or place of employment subject to the provisions of section twenty-eight of chapter seven.

Amended by St.1934, c. 132, § 1; St.1937, c. 249; St.1952, c. 155; St.1954, c. 680, § 7; St.1961, c. 224; St.1962, c. 710; St.1970, c. 760, § 4.

§ 11. Reports by physicians generally

The department may require every physician treating a patient whom he believes to be suffering from any ailment or disease contracted as a result of the nature, circumstances or conditions of the patient's employment to report such information relating thereto as it may require, within such time as it may fix, and it may issue a list of such diseases which shall be regularly reported upon by physicians, and may add to or change such list at any time. The department shall pay no fee for such report. Copies of all such reports and all statistics and data compiled therefrom shall be kept by it, and shall be furnished on request to the department of industrial accidents and the department of public health. No such report shall be subject to summons nor shall its contents be made public.

Amended by St.1935, c. 328; St.1950, c. 453.

§ 17. Entry of places of employment for examinations and investigations; access to records

For the enforcement of the provisions of this chapter, the commissioner, the assistant commissioner and the associate commissioners, and the director, inspectors, and other representatives of the division of industrial safety may enter places of employment, other than places of employment of persons engaged in domestic service in the home of the employer, and examine the methods of protection from accident, the means of escape from fire, the sanitary provisions, the lighting and means of ventilation, and make investigations as to the employment of women and minors and as to compliance with all provisions of this chapter, and shall have access to all records pertaining to wages, hours, and other conditions of employment which are found essential to such investigations.

Amended by St.1945, c. 430; St.1961, c. 585; St.1970, c. 760, § 6.

§ 18. Duties of industrial health inspectors relative to minors

Every industrial health inspector shall inform himself concerning the health of all minors employed in factories within his district; and whenever he may deem it advisable or necessary, he shall call the ill health or physical unfitness of any minor to the attention of his parents, guardians or employer and of the department.

SAFETY ORDERS APPLICABLE TO LONGSHORE AND WATERFRONT OPERATIONS

§ 18A. Sanitary and safety conditions; tools

Employers shall provide a change room with adequate storage facilities for clothes, shower baths and lavatories having hot and cold water, in every place of employment where the lack of such facilities would be harmful to health.

Every place of employment (dock, wharf, etc.), shall be provided with a sufficient number of water closets for the use of employees. Toilets shall be kept clean and supplied with an adequate supply of toilet paper.

Working areas, docks, stairways, etc., shall be provided with illumination which is adequate and suitable to secure the safety of employees.

Whenever harmful dusts, fumes, mists, vapors or gases exist in quantities harmful to employees, and the elimination of such hazards is not practicable, such hazards shall be controlled by ventilation or other means.

When it is impracticable to comply with the above requirement, the employer shall provide, and the employee exposed to such hazards shall use, approved respiratory protective equipment. This equipment shall be kept in sanitary condition.

Permanent floors, platforms, dock working areas, aisles and passageways shall be kept reasonably clear and in good repair. Where, due to lack of proper marking, aisles and passageways become hazardous, they shall be clearly defined by painted lines, curbings or other methods of marking. Where there is danger of slipping on these working areas, they shall be protected by the use of mats, cleats, high-friction surfaces or other equivalent protection.

The maximum weight of materials stored on building floors, load-carrying platforms or dock areas shall not exceed their safe-carrying. Material, wherever stored, shall be piled, stacked or racked in a manner designed to prevent it from tipping, falling, collapsing, rolling or spreading.

Hand tools and hand trucks shall be maintained in a safe condition. Unsafe tools or trucks shall not be used. Where there is danger of a portable ladder slipping in use, provision shall be made to secure the ladder in position by use of hooks, ropes, scabs, spikes, cleats or by other antislip devices, or by stationing an employee at the base of the ladder to hold it in position during use.

Ladders shall be maintained in good condition.

Ladders shall be faced, and both hands used, while ascending or descending.

Platforms, runways, ramps or other working areas four feet or more above the floor, ground or other working areas shall be guarded by a standard railing on all open sides, with the exception of open sides of loading or storage platforms which are used primarily for loading or unloading railroad cars or trucks, and open sides of storage platforms less than four feet wide, or portions thereof, which are loaded and unloaded exclusively by means of stackers or lift trucks handling pallet-supported loads.

Adequate and substantial bull rails, stringer rails or curbs shall be installed at the water side of all flush aprons on wharves, docks or piers.

The employer shall require that tools, machinery, gear and other equipment subject to wear be inspected at regular intervals and unsafe conditions corrected. If found to be defective or otherwise unsafe, employees shall report same to the person in charge of work, who shall have it discarded, marked and so placed that it cannot be used again until made safe.

Added by St.1959, c. 614.

§ 18B. Confined spaces; ventilation

Before allowing employees to enter confined spaces where flammable, poisonous, asphyxiant, suffocant or anesthetic vapors, gases or dusts are likely to exist, the area shall be made free of the hazardous substance; employees shall be advised of the hazard; adequate ventilation shall be provided; and proper respiratory equipment shall be provided where necessary.

Added by St.1959, c. 614.

§ 18E. Safety precautions in dangerous undertakings

Persons working in locations where there is a hazard to the head or eyes shall be safeguarded by means of head or eye protection.

Protection may be required for persons working under conditions where there is a hazard to the body, hands or feet.

Safety belts shall be of approved type. Lifelines shall be of strength equivalent to one-half inch manila rope.

At least two life buoys or life rings with appropriate lines attached shall be kept in conveniently accessible places where employees' work exposes them to the hazard of drowning, or each employee so exposed shall wear a life vest. Life vests may be required for workers who are in constant and imminent danger of drowning.

Readily located ladders shall be provided on all docks, wharves or piers where employees' work exposes them to the hazard of drowning. The ladders shall reach from the floor of the structure to the lowest water elevation. Portable ladders shall be equipped with a substantial means to readily secure them to the structure.

Added by St.1959, c. 614.

§ 18*I*. Penalty

Any person violating any provision of the preceding sections eighteen A, eighteen B, eighteen C, eighteen D, eighteen E, eighteen F, eighteen G and eighteen H shall be punished by a fine of two hundred dollars.

Added by St.1959, c. 614.

GENERAL PROVISIONS AS TO EMPLOYMENT

§ 19A. Copy of medical report for employee

Any employer requiring a physical examination of an employee shall, upon request, cause said person to be furnished with a copy of the medical report following the said examination.

Added by St.1953, c. 117.

PUBLIC EMPLOYMENT

§ 30A. Tours of duty and hours of work of state employees; regulations

Notwithstanding any other provision of this chapter or other general or special law, the service of all persons employed by the commonwealth is hereby restricted to five tours of duty in any one work week, and to such hours in any one work week, not less than thirty-seven and one half hours, except in the case of part-time employment, nor more than forty hours, and with like hours for like tour of duty classes, as determined by the personnel administrator, in accordance with section forty-five of chapter thirty, and the tour of duty is hereby restricted to eight hours, and such tour of duty shall be arranged to fall within a period not exceeding ten consecutive hours; provided, that this section shall not apply to the state police uniformed force and detectives, metropolitan district police, capitol police, conservation officers, coastal wardens, employees engaged in forest fire observation, investigators and examiners and other employees of the registry of motor vehicles having police powers under section twenty-nine of chapter ninety, labor relations examiners, teachers, armorers, elected officers, appointees of the governor, heads of departments and divisions and their deputies and assistants, confidential secretaries, scrub women, cleaners or incumbents of the positions of superintendents, assistant superintendents, wardens, deputy wardens, stewards, physicians, dentists, head farmers, business managers, chief power plant engineers at mental health, public health, public welfare and correction institutions, soldiers' homes in Massachusetts and agencies under the jurisdiction of the department of youth services; the manager of the boarding hall at the University of Massachusetts; the adjutant or assistant adjutants, directors of engineering services and directors of business services of the soldiers' homes in Massachusetts; the construction and maintenance supervisor at the reformatory for women; the state farm master at the state farm; and such other employees as may be exempted therefrom or any part thereof by a rule or rules of the director of personnel. The personnel administrator is empowered to make rules and regulations, subject to the approval of the commissioner of administration, to carry out the provisions of this section.

Added by St.1947, c. 677, § 1. Amended by St.1949, c. 780; St.1950, c. 439; St.1952, c. 626; St.1955, c. 643, § 6; St.1960, c. 430, § 1; St.1960, c. 614, § 1; St.1963, c. 798, § 4; St.1969, c. 838, § 60; St.1970, c. 758, § 1; St. 1973, c. 271; St.1974, c. 835, § 153.

§ 30B. Overtime of state employees; regulations

All service in excess of eight hours in any one tour of duty or forty hours in any one work week rendered by any employee of the commonwealth at the request of an officer of the commonwealth or other person whose duty it is to employ, direct or control such employee, except the state police uniformed force and detectives, metropolitan district police, capitol police, fire prevention engineer, boatswain coastal patrol boat, captain coastal patrol boat, coastal warden coastal patrol boat, coastal warden engineer costal patrol boat, industrial relations adjuster, labor relations examiners, teachers, armorers, elected officers, appointees of the governor, heads of departments and divisions and their deputies and assistants, confidential secretaries, incumbents of the positions of superintendents, assistant superintendents, deputy superintendents, stewards, physicians, dentists, head farmers, business managers, institution chief power plant engineers at mental health, public health, correctional institutions, soldiers' homes in Massachusetts and agencies under the jurisdiction of the department of youth services, the manager of the boarding hall at the University of Massachusetts, the adjutants of the soldiers' homes in Massachusetts, and any employees while on full travel status shall be compensated for at the rate of one and one half times the regular hourly rate of said employee for every hour or fraction thereof of such services rendered. The personnel administrator is empowered to make rules and regulations, subject to the approval of the commissioner of administration, to carry out the provisions of this section.

Added by St.1960, c. 614, § 2. Amended by St.1960, c. 762, § 1; St.1962, c. 748; St.1963, c. 798, § 5; St.1969, c. 838, § 61; St.1970, c. 758, § 2; St. 1974, c. 835, § 154.

§ 33D. Blood donations; leave of absence without loss of pay

Any employee of the commonwealth, of any county, and of any city or town which accepts the provisions of this section, shall be allowed a leave of absence without loss of pay of not more than eight hours in each calendar year for the purpose of donating platelets, plasma white cells or whole blood to any cancer research center.

Added by St.1973, c. 507.

§ 39. Hours of labor in institutions; employees with less hours under other statutes; emergencies

The maximum hours of labor of laborers, workmen and mechanics, of ward attendants, ward nurses, industrial and occupational therapists and watchmen, and of employees in kitchen, dining-room and domestic services, in state and county institutions, and of officers and instructors of state penal institutions and county penal and reformatory institutions, shall not exceed forty in each week. The foregoing provision shall not be construed as authorizing the employment of any such officer or employee whose work day and week is fixed under section thirty A or any other provision of law at less than said forty hours maximum to be employed beyond the hours so fixed and within said maximum without the payment of overtime. This section shall not prevent the superintendent, warden or executive officer from requiring the services of any person in any emergency where the health or safety of patients or inmates would otherwise be endangered, or in any extraordinary emergency, or in apprehending an escaped inmate.

Amended by St.1935, c. 444, § 1; St.1954, c. 632, § 1.

PROVISIONS AS TO HEALTH AND SAFETY

§ 106. Drinking water; violation of statute; coverage of term "industrial establishments"

All industrial establishments and every person engaged in carrying on a construction project shall provide fresh and pure drinking water to which their employees shall have access during working hours. Any person owning, in whole or in part, managing, controlling or superintending any industrial establishment or construction project in which this section is violated shall, on the complaint of the local board of health, the selectmen of a town or an inspector, be punished by a fine of one hundred dollars. For the purposes of this section the term "industrial establishments" shall be deemed to include public garages and premises used by express, trucking and transportation companies where persons are employed.

Amended by St.1955, c. 373, § 1; St.1956, c. 89.

§ 107. Water for humidifying purposes; violation of statute

The water used for humidifying purposes by any person operating a factory or workshop shall be of such a degree of purity as not to give rise to any impure or foul odors, and shall be so used as not to be injurious to the health of persons employed in such factories or workshops. Whoever violates this section shall be punished by a fine of not less than ten nor more than one thousand dollars.

§ 113. Light, ventilation, cleanliness, sanitation and heat in establishments

Every factory, workshop, manufacturing, mechanical and mercantile establishment, railroad freight house, railway express terminal, public garages and premises used by express, trucking and transportation companies and any other building in which a person is employed, other than a building under construction, shall be well lighted, well ventilated and kept free from unsanitary conditions, and work rooms therein in actual use shall be properly heated during the period from October fifteenth to May fifteenth, according to reasonable rules and regulations adopted by the department establishing minimum requirements with reference thereto; provided, however, that the provisions of this section shall not apply to such rooms which are under the supervision of the department of public health and are subject to the provisions of section seventy-three A of chapter ninety-four.

Amended by St.1934, c. 255; St.1955, c. 426; St.1968, c. 158; St.1969, c. 114; St.1973, c. 388.

§ 115. Devices and means to prevent injury to eyes; order; compliance; violation of statute

If it appears to an inspector that in any industrial establishment, from the nature of the work or the machinery used in connection therewith, or from other circumstances, there is danger of injury to the eyes of employees engaged in such work, and that the danger of injury may be decreased or prevented by any mechanical device or other practicable means, he shall, if the department so directs, order in writing that such device or other means shall be provided therein; and the proprietors and managers of the industrial establishment shall comply with the order. Violations of this section shall be punished by a fine of not less than five nor more than two hundred dollars for each week during which the violation continues, but a criminal prosecution for such violation shall not be begun unless a person has for four weeks after the receipt of a written order from an inspector neglected to comply therewith.

§ 117. Ventilation

Every establishment in which one or more persons is employed shall be so ventilated that all gases, vapors, dust, fumes, or any impurity injurious to health, whether generated in the course of the work carried on therein or otherwise, shall, so far as practicable, be rendered harmless.

Amended by St.1935, c. 208; St.1961, c. 222.

§ 118. Means to diminish inhalation of dust

If, in any place of employment, any process is carried on by which dust is caused which may be inhaled to an injurious extent by the persons employed therein, and it appears to an inspector that such inhalation would be substantially diminished without unreasonable expense by the use of a fan or by other mechanical means, such fan or other mechanical means, if he so directs, shall be provided, maintained and used.

Amended by St.1961, c. 438.

§ 133. Water closets, toilets and washing facilities; regulations; definitions of "industrial establishments" and "railroad establishments"

In every industrial establishment and railroad establishment there shall be provided suitable, adequate and convenient water closets and washing facilities, separate for each sex and plainly so designated, of such number, in such location, and so constructed, lighted, ventilated, arranged and maintained as may be determined by such reasonable rules and regulations as the department may adopt. No person shall be allowed to use a closet or privy provided for the use of persons of the opposite sex. If any such establishment is so located that a connection with a sewer system is, in the opinion of the department, impossible or impracticable, it shall provide such suitable toilet and washing facilities as the department may require. For the purposes of this section the term "industrial establishment" shall be deemed to include public garages and premises used by express, trucking and transportation companies where persons are employed. For the purposes of this section the term "railroad establishment" shall be deemed to mean that part, division or branch of any railroad in which three or more persons are employed except where toilet and washing facilities are maintained for public use.

Amended by St.1955, c. 373, § 2; St.1955, c. 669, § 1.

§ 136. Violation of public health laws; notice to town board of health; enforcement

If it appears to an inspector that any act, neglect or fault in relation to any drain, water closet, earth closet, privy, ash pit, water supply, nuisance or other matter in any industrial establishment is punishable or remediable under any law relative to the preservation of the public health, but not under this chapter, he shall give written notice thereof to the board of health of the town where such establishment is situated, and such board of health shall thereupon inquire into the subject of the notice and enforce the laws relative thereto.

§ 137. Foundry toilet rooms and water closets; failure to comply with statute

The proprietor of every foundry engaged in the casting of iron, brass, steel or other metal, and employing ten or more men, shall establish and maintain, except in towns where it would be impracticable by reason of the absence of public or private sewerage or of any running water system, a toilet room of suitable size and condition for the men to change their clothes therein, and provided with wash bowls, sinks or other suitable set appliances connected with running hot and cold water, and also a water closet connected with running water and separated from the said toilet room. The said water closet and toilet room shall be connected directly with the foundry building, propertly heated, ventilated and protected, so far as may be reasonably practicable, from the dust of the foundry. Whoever fails to comply with this section after being requested so to do by an inspector shall be punished by a fine of not more than fifty dollars.

§ 138. Injuring toilet appliances

Whoever wilfully destroys, defaces, injures or defiles any toilet appliances provided in any place of employment shall be punished by a fine of not more than fifty dollars.

§ 141. Medical and surgical chests; accommodations for treatment of injured or ill persons; facilities for heating food; violation of statute

Every person operating a factory, shop or mechanical establishment where machinery is used for any manufacturing or other purpose except for elevators, or for heating or hoisting apparatus, shall keep and maintain, free of expense to the employees, such medical or surgical chest, or both, as shall be required by the department, containing plasters, bandages, absorbent cotton, gauze, and all other necessary medicines, instruments and appliances for the treatment of persons injured or taken ill upon the premises. Every such person employing one hundred or more persons shall, if so required by the department, provide accommodations satisfactory to it for the treatment of persons injured or taken ill upon the premises, and also suitable and sanitary facilities for heating or warming food to be consumed by those employees of the factory, shop or mechanical establishment who so desire. Every person carrying on a mercantile establishment where twenty or more women or children are employed shall in the manner aforesaid provide such medical and surgical chest as the department may require. Whoever violates any provision hereof shall be punished by a fine of not less than five nor more than five hundred dollars for every week during which such violation continues.

§ 142. Sanitary material for cleaning printing presses

All publishers and printers shall use a sanitary cloth or other sanitary material in cleaning their presses.

BENZOL AND MIXTURES CONTAINING BENZOL

§ 142A. Marked receptacles for substances hazardous to health

No person shall keep for sale, sell, transport or store, and no person shall have for use in any manufacturing, mechanical or mercantile establishment, or in any other place of employment, benzene represented by the chemical formula C/6 H/6, in sections one hundred and forty-two B to one hundred and forty-two F, inclusive, called benzol, carbon tetrachloride or other substance which, in the opinion of the departments of labor and industries and of public health, acting jointly, is so hazardous to health as to warrant regulation, in any receptacle other than part of a vehicle used exclusively for outdoor transportation, unless such receptacle is marked with the words "Benzol", "Carbon Tetrachloride" or "Name of Substance", together with such warning as the commissioners of the department of labor and industries and of the department of public health jointly by reasonable rules and regulations may require.

Added by St.1933, c. 304. Amended by St.1935, c. 463, § 1; St.1949, c. 591, § 1; St.1955, c. 469, § 1.

§ 142B. Marked receptacles for materials containing substances hazardous to health

No person shall keep for sale, sell, transport or store, and no person shall have for use in any manufacturing, mechanical or mercantile establishment, or any other place of employment, any material containing benzol, carbon tetrachloride or other substance which, in the opinion of the department of labor and industries and the department of public health, acting jointly, is so hazardous to health as to warrant regulation, in any receptacle other than part of a vehicle used exclusively for outdoor transportation, unless such receptacle is marked with one of the following combinations of words:— "Contains benzol", "Contains carbon tetrachloride" or "Contains (name of substance)", together with such warning as the commissioners of the department of labor and industries and of the department of public health jointly by reasonable rules and regulations may require.

Added by St.1933, c. 304. Amended by St.1935, c. 463, § 2; St.1949, c. 591, § 2; St.1955, c. 469, § 2.

§ 142C. Markings; clear and conspicuous; size; place

The words and any warning required by sections one hundred and forty-two A and one hundred and forty-two B shall be clear and conspicuous, and shall be of such size and so placed as the commissioners of the department of labor and industries and of the department of public health jointly by reasonable rules and regulations may require.

Added by St.1933, c. 304. Amended by St.1955, c. 469, § 3.

§ 142D. Receptacles exempt from marking requirements

The commissioners of the department of labor and industries and of the department of public health acting jointly may, by reasonable rules and regulations, exempt from the provisions of sections one hundred and forty-two A and one hundred and forty-two B, under such restrictions as they may deem advisable, (*a*) closed receptacles which are in the possession of the manufacturer by whom the contents of such receptacles were made or compounded or of a common carrier, provided in each case the commissioners are satisfied that such contents are to be used only outside the commonwealth; (*b*) receptacles containing material used exclusively as motor fuel; (*c*) receptacles containing material which, as last compounded, contained a per cent by weight of benzol, carbon tetrachloride or other substance which the commissioners determine to be not so hazardous to health as to warrant regulation.

Added by St.1933, c. 304. Amended by St.1949, c. 591, § 3; St.1955, c. 469, § 4.

§ 142E. Reports concerning material hazardous to health

For the protection of persons exposed to possible injury by any material or substance which in the joint opinion of the departments of labor and industries and of public health, acting pursuant to sections one hundred and forty-two A and one hundred and forty-two B, is so hazardous to health as to warrant regulation, the commissioners of the departments of labor and industries and of public health, acting jointly, may by reasonable rules and regulations require such reports as they may deem advisable covering the manufacture, sale, receipt, possession or use of any such material or substance.

Added by St.1933, c. 304. Amended by St.1949, c. 591, § 4; St.1955, c. 469, § 5.

§ 142F. Violation of statutes and regulations; failure to mark receptacles; removal or defacement of marks

Whoever violates any provision of section one hundred and forty-two A, one hundred and forty-two B, or one hundred and forty-two C, or any rule or regulation made under section one hundred and forty-two A, one hundred and forty-two B, one hundred and forty-two C, one hundred and forty-two D and one hundred and forty-two E, and whoever, being charged with the duty of marking any receptacle containing benzol, carbon tetrachloride or other substance which, in the joint opinion of the departments of labor and industries and of public health, is so hazardous to health as to warrant regulation, or any material in which benzol, carbon tetrachloride or other susbtance which, in the opinion of said departments, acting jointly, is so hazardous to health as to warrant regulation, is contained, fails so to mark the same, and whoever wilfully removes or defaces any marking made in accordance with any of said provisions or rules and regulations shall be punished by a fine of not more than one hundred dollars.

Added by St.1933, c. 304. Amended by St.1949, c. 591, § 5; St.1955, c. 469, § 6.

§ 142G. Enforcement of statutes and regulations

The department of labor and industries shall enforce the provisions of sections one hundred and forty-two A to one hundred and forty-two F, inclusive, and the rules and regulations made hereunder in any manufacturing or mechanical establishment or in any other place of employment in so far as the same relate to the health of employees, and the department of public health shall enforce the provisions of said sections and the rules and regulations made hereunder in so far as they apply to the keeping and storage for sale to the public in any mercantile establishment of any of the substances or materials referred to in said sections.

Added by St.1955, c. 469, § 6.

INDUSTRIAL HOMEWORK

§ 144. Unlawful industrial homework

The manufacture of or work upon any of the following by industrial homework shall be unlawful, and no permit issued under section one hundred and forty-seven or certificate issued under section one hundred and forty-seven A shall be deemed to authorize such manufacture or work upon or the delivery of materials for such manufacture: tobacco; drugs and poisons; bandages and other sanitary goods; explosives, fireworks and articles of like character; outergarments and undergarments of men, women, boys, girls, children and infants, except hosiery and women's millinery; articles, the manufacture of or work upon which by industrial homework is determined by the commissioner, after investigation and hearing in the manner provided by sections one hundred and forty-five and one hundred and forty-six to be injurious to the health or welfare of the industrial homeworkers within the industry or to render unduly difficult the maintenance of existing labor standards or the enforcement of labor standards established by law or regulation for workers in the industry.

Added by St.1937, c. 429. Amended by St.1945, c. 600, § 2; St.1955, c. 764, § 3; St.1962, c. 253.

§ 147. Employer's permit; person to whom materials or articles may be delivered; effect of strike; payment of fees into treasury

No materials for manufacture or to be worked upon by industrial homework shall be delivered to any person in the commonwealth unless the employer so delivering them, or his agent if the employer is not a resident of or located within this commonwealth, has in his possession a valid permit issued by the commissioner under authority of this section, hereinafter and in sections one hundred and forty-seven A to one hundred and forty-seven H, inclusive, called an employer's permit. Such permit shall be issued by the commissioner, may be renewed annually by him, and, subject to the last sentence of section one hundred and forty-five, shall be valid for a period of one year from the date of its issuance, unless sooner revoked or suspended. Application for such permit shall be made in such form as the commissioner may from time to time by rule or regulation prescribe. No employer shall deliver or cause to be delivered any materials or articles for manufacture or to be worked upon by industrial homework to a person who is not in possession of a valid employer's permit, or a homeworker's certificate issued in accordance with this or the following section. The commissioner may revoke or suspend an employer's permit if he finds that the employer has violated any provision of sections one hundred and forty-four to one hundred and forty-seven H, inclusive, or has failed to observe or comply with any provision of his permit or has violated any rule or regulation adopted for control of industrial homework. No original permit shall be granted by the commissioner to any employer at whose plant there is a strike, and any permit so issued shall be revoked or suspended, unless the commissioner finds such strike to be unlawful under the provisions of paragraph (*e*) of section twenty C.

A fee of fifty dollars shall be paid to the commissioner for the original issuance of an employer's permit. For each annual renewal of such permit the employer shall pay to the commissioner a fee of fifty dollars, plus two dollars for each homeworker with whom the employer directly or indirectly had business relations during the preceding calendar year. Any such fees received by the commissioner shall be paid into the treasury to the credit of the General Fund.

Added by St.1937, c. 429. Amended by St.1941, c. 539; St.1945, c. 600, § 3; St.1953, c. 247; St.1955, c. 764, §§ 6, 7; St.1958, c. 666, § 1.

CHAPTER 152

WORKMEN'S COMPENSATION

PROCEDURE

Sec.
20. Hospital records as evidence; medical records and reports open to inspection.
20A. Copies of reports of medical examinations furnished employees; reports as evidence.
20B. Medical reports of disabled or deceased physicians as evidence.

PAYMENTS

30. Medical and hospital services; physicians other than insurer's; artificial eyes or limbs or appliances.
30A. Rehabilitation; duties of board; facilities; qualifications.
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PROCEDURE

§ 20. Hospital records as evidence; medical records and reports open to inspection

Copies of hospital records kept in accordance with section seventy of chapter one hundred and eleven, certified by the persons in custody thereof to be true and complete, shall be admissible in evidence in proceedings before the division or any member thereof. The division or any member, before admitting any such copy in evidence, may require the party offering the same to produce the original record. All medical records and reports of hospitals, clinics and physicians of the insurer, employer, or of the employee shall be filed with and open to the inspection of the division so far as relevant to any matter before it. Such reports shall be open to the inspection of any party.

Amended by St.1935, c. 340; St.1945, c. 464; St.1946, c. 390; St.1949, c. 276; St.1953, c. 314, § 6.

§ 20A. Copies of reports of medical examinations furnished employees; reports as evidence

Any employer who maintains a clinic, dispensary or hospital for the treatment of injured employees and any insurer who maintains a clinic, dispensary or hospital for the treatment of injured employees of any insured shall, upon request of any injured employee attending such a clinic, dispensary or hospital, or of his attorney, furnish such employee or his attorney, at cost, with copies of reports of all medical examinations of the injured employee made while at such clinic, dispensary or hospital, showing the history obtained, the nature of the treatment given or prescribed, the diagnosis and the prognosis. No such medical report shall upon objection by the claimant be admissible in evidence in any proceeding under this chapter, unless a copy thereof has been furnished to the claimant, or a person acting in his behalf, or to his attorney, within twenty days after a written request therefor.

Added by St.1945, c. 468. Amended by St.1954, c. 194.

§ 20B. Medical reports of disabled or deceased physicians as evidence

In proceedings before the industrial accident board, the medical report of an incapacitated, disabled or deceased physician who attended or examined the employee, including expressions of medical opinion, shall, at the discretion of the member, be admissible as evidence if the member finds that such medical report was made as the result of such physician's attendance or examination of the employee.

Added by St.1974, c. 598. Amended by St.1977, c. 777.

PAYMENTS

§ 30. Medical and hospital services; physicians other than insurer's; artificial eyes or limbs or appliances

The insurer shall furnish to an injured employee adequate and reasonable medical and hospital services, and medicines if needed, together with the expenses necessarily incidental to such services, and in the case of an injured employee, a physical examination shall be given at least once a year while the employee is a resident in a hospital. The employee may select a physician other than the one provided by the insurer; and in case he shall be treated by a physician of his own selection, or where in case of emergency or for other justifiable cause a physician other than the one provided by the insurer is called in to treat the injured employee, the reasonable cost of the physician's services shall be paid by the insurer, subject to the approval of the division. Such approval shall be granted only if the division finds that the employee was so treated by such physician or that there was such emergency or justifiable cause, and in all cases that the services were adequate and reasonable and the charges reasonable. In any case where the division is of opinion that the fitting of the employee with an artificial eye or limb, or other mechanical appliance, will promote his restoration to or continue him in industry, it may order that he be provided with such an artificial eye, limb or appliance, at the expense of the insurer. The provisions of this section shall be applicable so long as such services are necessary, notwithstanding the fact that maximum compensation under other sections of this chapter may have been received by the injured employee.

Amended by St.1936, c. 164; St.1943, c. 181; St.1946, c. 233, § 1; St.1948, c. 159; St.1953, c. 314, § 6; St.1972, c. 403.

§ 30A. Rehabilitation; duties of board; facilities; qualifications

The rehabilitation board established under section twenty-four of chapter twenty-three shall continuously study the problems of rehabilitation and shall examine such rehabilitation facilities, both private and public, and establish a list of such physicians as are available to render competent rehabilitation services for seriously injured industrial workers. Rehabilitation facilities shall include medical, surgical, hospital, prosthesis, and physical restoration services. No faclity shall be considered as qualified unless it is established to provide rehabilitation services for persons suffering from some specialized or general type of disablement within the field of industrial injury and unless such facility is operated under the supervision of physicians qualified to render rehabilitation services, is staffed with trained and qualified technicians and has received a certificate of qualification from the said commission. No physician shall be considered as qualified unless he has had experience for a reasonable term of years in a qualified rehabilitation facility or is qualified for a special rehabilitation procedure because he holds a certification by an American Board of Specialty.

Added by St.1950, c. 767, § 2. Amended by St.1952, c. 630, § 11; St.1956, c. 602, § 14.

§ 30B. Rehabilitation examiners; referral of employees; reports as evidence; rehabilitation services generally; disputes; hearing; decision; enforcement

The rehabilitation board shall designate to act as impartial rehabilitation examiners physicians who are specially qualified and experienced in special means and methods of rehabilitation. The chairman of the industrial accident board shall appoint such physicians as are so designated by the rehabilitation board to serve as impartial rehabilitation examiners and to assist the division and the board in cases which may require rehabilitation services. A reasonable fee shall be allowed to the impartial rehabilitation examiner by the division, and the insurer shall reimburse the division for the amount so paid.

The division and the rehabilitation board or any member thereof may refer to an impartial rehabilitation examiner any employee entitled to compensation under the provision of this chapter for recommendation of the need and kind of rehabilitation treatment or services required by him. The report of the impartial rehabilitation examiner shall be admissible as evidence in any proceeding before the division or member thereof; provided, that the employee and the insurer have seasonably been furnished with copies thereof. An insurer or self-insurer shall furnish rehabilitation services by a rehabilitation facility or a physician who, in the opinion of the board, is qualified to render rehabilitation services, and shall also furnish vocational services to any injured worker eligible for or receiving compensation under the provisions of this chapter who is determined to be fit and eligible for vocational rehabilitation by the Massachusetts rehabilitation commission, established by section seventy-four of chapter six; provided, that any dispute concerning liability or payments for such vocational rehabilitation by said insurer or self-insurer shall be decided by the industrial accident board after a hearing before a member thereof at which both the employee and the Massachusetts rehabilitation commission, whether or not it has paid for rehabilitation services, shall be parties and the attorney general shall, if requested by the Massachusetts rehabilitation commission, represent said commission in any matter relating thereto. The decision of the member shall be filed in accordance with section eight and unless a claim for review is filed within the period prescribed in section eight, the decision, including any order to the insurer or self-insurer to reimburse a party, shall be enforceable under section eleven. Fees for rehabilitation services shall be the reasonable and necessary cost of such services; expenses for the rehabilitation of the injured employee shall include travel, board and room when necessary, subject to the approval of the division, and shall be paid for by the insurer.

Added by St.1950, c. 767, § 2. Amended by St.1953, c. 314, § 6; St.1956, c. 602, § 15; St.1971, c. 773.

§ 30C. Acceptance of rehabilitation services

Nothing in sections thirty A or thirty B shall be construed as requiring any injured employee to accept rehabilitation services.

Added by St.1956, c. 602, § 16.

§ 30D. Furnishing board with names of recipients of compensation; confidential information; disclosure

Every insurer or self-insurer shall furnish to the industrial accident rehabilitation board, established by section twenty-four of chapter twenty-three, the name and address of every person who has been receiving from such insurer or self-insurer compensation under the provisions of chapter one hundred and fifty-two for a period of six months. Such information shall be confidential and for the exclusive use of said board in the discharge of its duties, and shall not be open to the public, notwithstanding the provisions of section ten of chapter sixty-six or other provisions of law; provided, that nothing herein shall be construed to prevent the board from publishing such information in statistical form without disclosing the identity of the applicant involved.

Whoever, except with the authority of the board or pursuant to its rules and regulations, or as otherwise required or authorized by law, shall disclose such information shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1950, c. 767, § 2.

MISCELLANEOUS PROVISIONS

§ 69. Commonwealth, counties, cities, towns and districts in general; members of a police or fire force in work under a contract

The commonwealth and any county, city, town or district having the power of taxation which has accepted chapter eight hundred and seven of the acts of nineteen hundred and thirteen, and any town or district having the power of taxation which accepts the provisions of this section at an annual meeting or at any special meeting called for the purpose, and any county tuberculosis hospital district under sections seventy-eight to ninety, inclusive, of chapter one hundred and eleven, if the trustees of said district accept the provisions of this section and any regional school district which accepts this section by vote of its regional district school committee, shall pay to laborers, workmen, mechanics, and nurses, employed by it who receive injuries arising out of and in the course of their employment, or, in case of death resulting from such injury, to the persons entitled thereto, the compensation provided by this chapter. Compensation payable under this chapter to an injured employee of the commonwealth or of any such county, city, town or district who receives full maintenance in addition to his cash salary or wage, and compensation payable thereunder to his dependents in case of his death, shall be based upon his average weekly wages plus the sum of thirty dollars a week in lieu of the full maintenance received by him; provided, that, in the discretion of the superintendent or other person in charge or control of any institution where such an employee is employed, such maintenance, computed at the rate per week hereinbefore set forth, may be continued during total incapacity, in which event such weekly compensation shall be based solely upon the cash salary or wages of such employee. No cash salary or wages shall be paid by the commonwealth or any such county, city, town or district to any person for any period for which weekly total incapacity compensation under this chapter is payable, except that such salary or wages may be paid in full until any overtime or vacation which the said employee has to his credit has been used, without deduction of any compensation herein provided for which may be due or become due the said employee during the period in which said employee may be totally incapacitated, and except that such salary or wages may be paid in part until any sick leave allowance which the employee has to his credit has been used, any other provisions of law notwithstanding. An employee who is entitled to any sick leave allowance may take such of his sick leave allowance payment as, when added to the amount of any disability compensation herein provided, will result in the payment to him of his full salary or wages. Sections seventy to seventy-five, inclusive, shall apply to the commonwealth and to any county, city, town or district having the power of taxation which has accepted said chapter eight hundred and seven, and to any town or district having the power of taxation which accepts the provisions of this section as hereinbefore provided, and to any county tuberculosis hospital district under said sections seventy-eight to ninety, inclusive, if the trustees of said district accept the provisions of this section. The terms laborers, workmen and mechanics, as used in sections sixty-eight to seventy-five, inclusive, shall include all employees of any such city or town, except members of a police or fire force, who are engaged in work being done under a contract with the state department of public works, and shall include other employees except members of a police or fire force, regardless of the nature of their work, of the commonwealth or of any such county, city, town, district, county tuberculosis hospital district, or regional school district to such extent as the commonwealth or such county, city, town, district, county tuberculosis hospital district or regional school district, acting respectively through the governor and council, county commissioners, city council, the qualified voters in a town or district meeting, the trustees of such county tuberculosis hospital district, or the regional district school committee, shall determine, as evidenced by a writing filed with the department. The terms laborers, workmen and mechanics, as used in sections sixty-eight to seventy-five, inclusive, shall, if the city council or the town meeting so votes, also include such elected or appointed officers of the city or town, except the mayor, city councillors, selectmen or members of the police or fire force, as the mayor or board of selectmen may, from time to time, designate, as evidenced by a writing filed with the division. Any county, city, town or district which accepts this section may provide for payment of compensation of certain or all of its employees by insurance with an insurer, subject, however, to the provisions and limitations of this section.

The term "employee" as used in this section shall include the manager of the municipal light plant, municipal gas plant or municipal gas and electric plant of any city or town owning and operating such plant either pursuant to the provisions of chapter one hundred and sixty-four or of any special law.

Amended by St.1933, c. 318, § 7; St.1936, c. 260; St.1936, c. 403; St.1939, c. 435; St.1939, c. 468; St.1941, c. 614; St.1945, c. 729; St.1946, c. 422; St.1947, c. 590; St.1951, c. 610, § 2; St.1959, c. 555; St.1960, c. 655; St. 1966, c. 401; St.1969, c. 863; St.1971, c. 1059.

§ 73. Election to receive compensation or pension; retirement boards prosecuting claims; attorney; notice to boards; special pensions

Any person entitled under section sixty-nine to receive compensation from the commonwealth or from such county, city, town or district and any person entitled under section thirty-one, thirty-four, thirty-four A, thirty-five, thirty-five A or thirty-six to receive compensation from the Massachusetts Turnpike Authority or the Massachusetts Port Authority and any police officer of the Massachusetts Bay Transportation Authority so entitled to compensation under said sections and who is also entitled to a pension by reason of the same injury, shall elect whether he will receive such compensation or such pension, and shall not receive both, except in the manner and to the extent provided by section fourteen of chapter thirty-two. A retirement board, for the purposes of the last-mentioned section, may prosecute in the name and for the benefit of a member or beneficiary of its system or his legal representative or any of his dependents, who is or may become entitled to a pension under chapter thirty-two, all claims which he or they may have for compensation under this chapter, if such member, beneficiary, legal representative or dependent has failed, or such board is of opinion that he will fail, to make or prosecute such claim with reasonable promptness and diligence. Said board, so prosecuting such remedy, shall be deemed to be a party in interest and may take an appeal and institute any proceeding which the employee or his legal representative or dependent might take or institute. In proceedings where the commonwealth, county, city, town or district is represented by the attorney general, city solicitor, town counsel or other attorney, the retirement board may be represented by an attorney of its own selection. Agents of the commonwealth under section seventy-five and such agents, and insurers, of counties, cities, towns or districts, executing agreements for compensation under this chapter, shall forthwith notify the appropriate retirement board.

If a person entitled to such compensation from the commonwealth or from such county, city, town or district receives by special act a pension for the same injury, he shall forfeit all claim for compensation; and any compensation received by him or paid by the commonwealth or by such county, city, town or district which employs him for medical or hospital services rendered to him may be recovered back in an action at law. No further payment shall be awarded by vote or otherwise to any person who has claimed and received compensation under sections sixty-nine to seventy-five, inclusive.

Amended by St.1936, c. 318, § 4; St.1937, c. 336, § 23; St.1941, c. 379, § 12; St.1950, c. 209; St.1967, c. 597, § 23; St.1971, c. 1012, § 15; St.1978, c. 487, § 22.

§ 73A. Employment of partially disabled employee; temporary employment to fill vacancy

Any employee who by reason of partial disability is entitled to receive compensation as provided by section sixty-nine from the commonwealth, or from such county, city, town or district, and who in the opinion of the head of any department or of any appointing officer, can be suitably employed in such department or by such officer in a position with duties adapted to his reduced earning capacity, may, subject in the case of a state employee to the approval of the division of personnel administration, be so employed at a salary based on his reduced earning capacity as determined by the industrial accident board or a member thereof after a hearing; provided, that no such employee shall be so employed in a position within the classified civil service without the approval of the personnel administrator. The head or appointing officer of the department in which such employee was employed previous to the injury causing his disability, may, subject to the provisions of chapter thirty-one, temporarily employ a person to fill any vacancy in the original position of such employee that may be caused by his disability, pending the return of such employee to full time employment at his regular duties.

Added by St.1941, c. 649. Amended by St.1974, c. 835, § 156.

TITLE XXII

CORPORATIONS

CHAPTER 155

GENERAL PROVISIONS RELATIVE TO CORPORATIONS

GENERAL PROVISIONS

Sec.
2B. Clinics, hospitals, rest homes, etc., approval of articles of organization and amendments.

GENERAL PROVISIONS

§ 2B. Clinics, hospitals, rest homes, etc., approval of articles of organization and amendments

Before approving articles of organization in connection with the proposed incorporation of a dispensary or clinic, hospital, sanatorium, convalescent or nursing home, infirmary, rest home, or like institution requiring a license from the department of public health or before approving an amendment to such articles of organization of an existing corporation which will give it such power, the state secretary shall refer such articles or amendments thereto to the department of public health, which shall immediately make an investigation as to the applicants for incorporation, the corporation or the petitioners, as the case may be, and the purposes thereof, and of all material facts, including facts tending to show that the probable purpose is to cover any illegal business, or that the applicants, corporation or petitioners are not suitable persons from lack of financial ability or from any other cause, and facts as to the present need for an organization with such purposes at the time and place and with respect to the special circumstances set forth in such articles, amendment or petition. The department of public health shall give the applicant or applicants a public hearing, notice of which shall be published once a week for three successive weeks in some paper published in the county where the corporation has or is to have its principal office or rooms, and if said office or rooms are to be in Boston, in some Boston daily paper, the last publication to be at least three days before the day set for the hearing. After such hearing, the commissioner of public health shall make findings of fact as to such purposes, need and suitability, and in accordance therewith shall approve or disapprove such articles, amendment or petition. Thereupon he shall report such findings and action to the secretary. If the commissioner of public health approves the articles, amendment or petition, the secretary shall accept the findings of fact made and reported to him by the commissioner of public health. If the commissioner of public health disapproves the application, the secretary shall refuse to approve the articles of organization, amendment or petition, as the case may be. If he refuses, the applicant or applicants may appeal to the superior court, which shall hear the case and finally determine whether or not the articles of organization or an amendment thereof shall be approved. For the purposes of such appeal, failure by the department of public health to report to the secretary within three months after the date of reference to it by him of articles, an amendment or petition, as herein provided, shall be deemed to be a report to him with disapproval by the commissioner of public health, and failure of the secretary to approve or disapprove articles, an amendment or petition, within four months after their original submission to him by the applicant or applicants shall be deemed to be a refusal by him to approve them. For purposes of this section, the word "clinic" shall have the same meaning as is set forth in section fifty-two of chapter one hundred and eleven, except that it shall not include a professional corporation established under chapter one hundred and fifty-six A, unless such corporation is actually operating a clinic.

Added by St.1958, c. 441. Amended by St.1962, c. 750, § 8; St.1970, c. 451.

CHAPTER 160

RAILROADS

Sec.
1. Definitions.

EQUIPMENT OF ENGINES AND CARS

172. Reasonable passenger accommodations.
173. Women or children in smoking cars.
174. Drinking water in railroad cars.
175. Failure to provide drinking water; penalty.
176. Other necessary appliances.

§ 1. Definitions

The following words as used in this chapter, unless the context otherwise requires, shall have the following meanings:

"Board of aldermen" or "selectmen" includes the board or other authority exercising the powers of a board of aldermen or of selectmen; but nothing herein shall be construed as affecting the veto power of a mayor of any city.

"Department", the department of public utilities.

"Public way", any way laid out by public authority.

"Railroad", a railroad or railway of the class usually operated by steam power.

"Railroad corporation", the corporation which lays out, constructs, maintains or operates a railroad of the class usually operated by steam power.

"Railroads and railways", all railroads and railways except tramways in mines and marine railways.

EQUIPMENT OF ENGINES AND CARS

§ 172. Reasonable passenger accommodations

Every railroad corporation shall furnish reasonable accommodations for the convenience and safety of passengers; and for every wilful neglect to provide the same shall forfeit not less than five nor more than twenty dollars.

§ 173. Women or children in smoking cars

A railroad corporation shall not require women or children to ride in smoking cars. For a violation of this section the corporation, or any officer or employee thereof, shall be punished by a fine of not less than ten nor more than fifty dollars.

§ 174. Drinking water in railroad cars

Every railroad car, except private cars, sleeping cars, dining cars, parlor cars, and the smoking, buffet and observation cars used in connection with the same, while in use for the transportation of passengers, upon a train running thirty miles or more, shall be provided with a sufficient quantity of pure drinking water in such place in the car as will be convenient for the passengers, and with individual drinking cups accessible to the passengers. Said cups shall be in a proper receptacle near the water tank, and said receptacle shall be so placed as to be easily seen and shall be plainly marked as follows:

DRINKING CUPS
FOR USE
ONLY IN THIS CAR
FREE

such words to occupy a space not less than two inches wide by three inches long, and to be in clear black letters on a white background. No charge shall be made for the water or for the drinking cups. The water and cups supplied shall be subject to the supervision and approval of the department of public health, which shall enforce this and the following section.

§ 175. Failure to provide drinking water; penalty

Violations of the preceding section shall be punished by a fine of not less than twenty-five dollars for each trip made by a car used for transporting passengers and not provided with water and utensils for its distribution in accordance with the preceding section.

§ 176. Other necessary appliances

The department may require a railroad corporation to equip its cars with such other appliances as, in the judgment of the department, are necessary for the further protection of life in all passenger trains used in the commonwealth.

CHAPTER 161

STREET RAILWAYS

MATTER OF CONSTRUCTION

Sec.
1. Definitions.

FARES AND ACCOMMODATIONS

105. Additional passenger accommodations.

MATTER OF CONSTRUCTION

§ 1. Definitions

In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

"Board of aldermen", or "selectmen", includes the board or other authority exercising the powers of a board of aldermen or of selectmen, but nothing in this chapter shall affect the veto power of a mayor of a city.

"Company", a street railway company.

"Department", department of public utilities.

"Extension", any railway constructed by a street railway company in a city or town in addition to that authorized by its original location therein.

"Location", as applied to a street railway, the grant to a street railway company of the right to construct, maintain and operate a street railway in a public way or place.

"Original", as applied to a street railway location in a city or town, the first location granted to the company in such city or town.

"Public way", any way laid out by public authority.

"Street railway" or "railway", a railway, including poles, wires or other appliances and equipment connected therewith, of the class operated by motive power other than steam, and usually constructed upon public ways and places.

FARES AND ACCOMMODATIONS

§ 105. Additional passenger accommodations

If the department deems additional accommodations including waiting rooms, stations, water closets and other sanitary conveniences for the traveling public are required upon any street railway, it may, after due notice to the company and a hearing, make an order for such additional accommodations, and may alter, renew or revoke the order. A company which, for more than one week after receiving written notice of such order, fails to comply therewith, shall forfeit to the use of the city or town where such additional accommodations are to be used, or if they are to be used in more than one city or town, to the use equally of such cities or towns, one hundred dollars for each day thereafter during which such failure continues.

CHAPTER 164

MANUFACTURE AND SALE OF GAS AND ELECTRICITY

DEFINITIONS

Sec.
1. Definitions.
2. Construction.

INSPECTION OF GAS AND METERS

116A. Disconnection of services in case of fire, explosion or other disaster.

SHUTTING OFF SERVICE

124. Entry of premises to stop gas or electricity.
124A. Shutting off service during serious illness.
124B. Shutting off gas or electric service for failure to pay for appliances; prohibition.
124C. Nursing homes, homes for the aged, convalescent homes, and hospitals; shutting off gas or electric service.
124D. Shutting off gas or electric service to tenants restricted; procedures; violations; penalty.
124E. Termination of gas and electric service; households with residents 65 or older.

Sec.
124F. Shutting off gas or electric service; financial hardship.
125. Refusal to supply because of default of previous occupant.

INTERFERENCE WITH FACILITIES

126. Willful injury or interference with gas meter or other property; penalty.
127. Intentional injury to electric meter or other property; penalty.

DEFINITIONS

§ 1. Definitions

In this chapter, unless the context otherwise requires, the following words shall have the following meanings:

"Articles of organization", (*i*) the articles of organization of a corporation which were filed subsequent to October first, nineteen hundred and seventy-three, (*ii*) any agreement of association, special act of incorporation, and other charter documents, including by-law provisions and stockholder votes in effect prior to October first, nineteen hundred and seventy-three, which, subsequent to that date, would be included in articles of organization, and all amendments thereto, effective prior to October first, nineteen hundred and seventy-three, and (*iii*) any of the following amendments made or filed from time to time subsequent to October first, nineteen hundred and seventy-three:

(1) a certificate of a vote establishing a series filed pursuant to section twenty-six of chapter one hundred and fifty-six B;

(2) articles of amendment filed pursuant to section eight B;

(3) restated articles of organization filed pursuant to section eight C;

(4) certificates of confirmation of proceedings filed pursuant to section eight D;

(5) articles of consolidation or merger filed pursuant to section one hundred and two A;

(6) articles of dissolution filed pursuant to section one hundred of chapter one hundred and fifty-six B;

(7) a certificate as to the revival of a corporation filed pursuant to section one hundred and eight of chapter one hundred and fifty-six B.

"Corporation", a corporation to which this chapter applies, as set forth in section three.

"Department", the department of public utilities.

"Electric company", a corporation organized under the laws of the commonwealth for the purpose of making by means of water power, steam power or otherwise and selling, or distributing and selling, electricity within the commonwealth, or authorized by special act so to do, even though subsequently authorized to make or sell gas.

"Gas company", a corporation organized under the laws of the commonwealth for the purpose of making and selling, or distributing and selling, gas within the commonwealth, even though subsequently authorized to make or sell electricity.

"Supplying electricity in bulk", engaging in the business of making and selling or distributing and selling electricity to electric companies, railroads, street railways or electric railroads, or to municipalities for municipal use or re-sale to their inhabitants, or to persons, associations or corporations under limitations imposed by special law or under section ninety or corresponding provisions of earlier laws.

Amended by St.1973, c. 860, § 1.

§ 2. Construction

In construing sections seventy, seventy-one, seventy-four to eighty-three, inclusive, ninety-two to ninety-five, inclusive, one hundred and three, one hundred and five, one hundred and six, one hundred and nine, one hundred and twelve to one hundred and fourteen, inclusive, one hundred and sixteen, one hundred and seventeen, one hundred and nineteen, one hundred and twenty, one hundred and twenty-one, one hundred and twenty-three to one hundred and twenty-seven, inclusive, unless the context otherwise requires, the terms "corporation", "gas company" and "electric company" shall include all persons, firms, associations and private corporations which own or operate works or a distributing plant for the manufacture and sale or distribution and sale of gas for heating and illuminating purposes, or of electricity, within the commonwealth; and in construing sections one hundred and three, one hundred and five, one hundred and nine, one hundred and twelve to one hundred and fourteen, inclusive, one hundred and sixteen, one hundred and seventeen, one hundred and twenty, one hundred and twenty-one, and one hundred and twenty-three to one hundred and twenty-seven, inclusive, the terms "corporation", "gas company" and "electric company" shall include municipal corporations which own or may acquire municipal lighting plants.

INSPECTION OF GAS AND METERS

§ 116A. Disconnection of services in case of fire, explosion or other disaster

In the event of a fire, explosion or other disaster, fire fighters and police officers shall permit any officer or servant of a gas or electric company who is duly authorized and displays an identification badge, as provided in section one hundred and sixteen, to enter any area or building in order to shut off the gas or electricity, which is or may become a source of danger to the public.

Added by St.1966, c. 351.

SHUTTING OFF SERVICE

§ 124. Entry of premises to stop gas or electricity

Except as otherwise provided in this chapter, a gas or electric company may stop gas or electricity from entering the premises of any person failing to pay the amount due therefor or for the use of the meter or instrument necessary to measure supply of service; and for such purpose, the officers, servants or workmen thereof may, after three days' notice by mail, exclusive of Saturdays, Sundays and legal holidays, enter his premises between the hours of eight in the forenoon and four in the afternoon and separate and take away such meter or other property of the company, and may disconnect any meter, pipe, wires, fittings or other works, whether they are property of the company or not, from its mains, pipes or wires. In the event a person is being serviced by gas or electricity at two or more premises at the same time, a gas or electric company may enter only those premises to which the unpaid amount relates.

Amended by St.1935, c. 237; St.1935, c. 376, § 2; St.1952, c. 102; St.1965, c. 118, § 1; St.1971, c. 824; St.1973, c. 858, § 1.

§ 124A. Shutting off service during serious illness

No gas or electric company shall cut off or fail to restore gas or electric service in any residence during such time as there is a serious illness therein, provided that a registered physician or the local board of health certifies in writing to the company that such serious illness exists and provided, further, that the customer cannot afford to pay any overdue bill because of a financial hardship. The department may promulgate such rules and regulations consistent with this section as it deems reasonable and necessary to carry out the intent of this section. Any willful violation of this section or section one hundred and twenty-four by any gas or electric company shall be punished by a fine or not more than fifty dollars.

Added by St.1935, c. 376, § 1. Amended by St.1965, c. 118, § 2; St.1969, c. 802, § 1.

§ 124B. Shutting off gas or electric service for failure to pay for appliances; prohibition

No gas or electric company shall shut off gas or electric service in any home for the reason that a person has failed to pay for an appliance purchased from such company.

Added by St.1965, c. 130.

§ 124C. Nursing homes, homes for the aged, convalescent homes, and hospitals; shutting off gas or electric service

No gas or electric utility intending to shut off gas or electricity in any licensed nursing home, home for the aged, convalescent home or hospital, shall do so without first giving fourteen days' notice in writing to the customer and to the department. Such utility may thereafter shut off such service only upon such terms and conditions as may be determined by the department.

Added by St.1971, c. 767.

§ 124D. Shutting off gas or electric service to tenants restricted; procedures; violations; penalty

No gas or electric company shall shut off gas or electric service to any tenant residing in a dwelling unit who, under a rental arrangement, receives the benefit of gas or electricity or heat, hot water, cooking or lighting, or any combination thereof, but who is not the customer of record of the gas or electric company which supplies such gas or electricity, without first complying with the notice provisions of section one hundred and twenty-four and regulations of the department in compliance with such regulations, and has given notice to each tenant affected thereby. Such notice shall contain the following information:

(a) the amount then due and payable for such gas or electric service;

(b) the date on or after which such service will be shut off, such date to be not less than fifteen nor more than thirty days, as determined by the department, after the day on which such notice is first given;

(c) the date on which said notice is given; and

(d) the right of the occupants of such building to pay the amount due or such portion thereof as is prescribed by regulation of

the department and thereby avoid a cessation of service, and to recover the amounts so paid from the person to whom they would otherwise pay their rent.

Any officer or servant of such company as provided in section one hundred and sixteen may, at any reasonable time, enter the common hallways of such building for the purpose of complying with the provisions of this section. Any person who removes, interferes, or tampers with such notice or the provision thereof shall be guilty of a violation of this section and shall be punished by a fine not to exceed twenty-five dollars.

At any time after the date such notice is given any persons who are occupants of the dwelling units within such building may pay such company the amount due or such portion thereof as is mutually agreed upon by the occupants and the company, provided that where no such agreement is reached, the department shall make a final determination of the amount of said portion, in order to avoid cessation of service. If such final determination by the department is not made prior to the date on which service otherwise would have been terminated, such service shall be continued for a period not to exceed fifteen days, during which time the department shall render said final determination. If such amount is received after service has been shut off, service shall be restored by the company as soon as practicable. Any such occupant who has paid all or any portion of said amount may subsequently recover the amount paid to the company either by deducting said amount from any rent or payment on account of taxes or operating expenses then or thereafter due from such occupant to the person to whom he would otherwise pay his rent or by obtaining reimbursement from the person to whom he last paid rent. The company shall, upon receiving any such payment, notify the person liable for gas or electric service as stated in said notice of the amount or amounts paid by any occupant pursuant to the provisions of this section.

Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any reprisal against any occupant for exercising his rights pursuant to this section.

Any gas or electric company wilfully violating the provisions of this section shall be punished by a fine of not more than fifty dollars for each such violation.

The department shall establish from time to time such reasonable rules and regulations consistent with this section as may be necessary.

Added by St.1973, c. 858, § 2. Amended by St.1974, c. 270, § 1.

§ 124E. Termination of gas and electric service; households with residents 65 or older

No gas or electric company shall shut off gas or electric service to any household in which all residents are sixty-five years of age or older, for failure to pay an outstanding indebtedness for said service without first complying with all rules and regulations of the department related thereto.

The department shall promulgate such rules and regulations as are necessary to ensure that termination of service shall be authorized only after said company has complied with such reasonable methods of collection as may be approved by the department.

Added by St.1975, c. 422.

§ 124F. Shutting off gas or electric service; financial hardship

No gas or electric company shall between November fifteenth and March fifteenth shut off gas or electric service to any residential customer who cannot pay an overdue charge because of financial hardship, when such gas or electric service is used to provide heat or to operate the heating system of the customer's unit or building. The department may promulgate such rules and regulations consistent with this section as it deems reasonable and necessary to implement the provision of this section.

Added by St.1979, c. 802, § 2.

§ 125. Refusal to supply because of default of previous occupant

A gas or electric company shall not refuse to supply gas or electricity for any building or premises to a person applying therefor who is not in arrears to it for any gas or electricity previously supplied to him, because a bill for gas or electricity remains unpaid by a previous occupant of such building or premises.

INTERFERENCE WITH FACILITIES

§ 126. Wilful injury or interference with gas meter or other property; penalty

Whoever wilfully or fraudulently injures, disconnects, removes or otherwise interferes with, or suffers to be injured, disconnected, removed or otherwise interfered with, any meter, pipes or fittings belonging to a gas company or to any person, or prevents a meter from duly registering the quantity of gas supplied through the same, or in any way hinders or interferes with its proper action or just registration, or fraudulently burns or wastes the gas of such company or of any person, or whoever attaches a pipe or any appliance to a main or pipe belonging to a gas company, or, without the written consent of such company, uses or causes to be used any gas supplied by such company, unless the same passes through a meter set by the company, or uses or causes to be used, any gas charged to any person without his written consent, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Amended by St.1961, c. 284; St.1977, c. 191, § 1.

§ 127. Intentional injury to electric meter or other property; penalty

Whoever unlawfully and with intent to avoid payment by himself or another person for a prospective or previously rendered service the charge or compensation for which is measured by a meter or other mechanical device injures or destroys, or suffers to be injured or destroyed, any meter, pipe, conduit, wire, line, pole, lamp or other apparatus belonging to a corporation engaged in the manufacture or sale of electricity or to any person, or whoever unlawfully and with intent to avoid payment by himself or another person for a prospective or previously rendered service prevents an electric meter from duly registering the quantity of electricity supplied, or in any way interferes with its proper action or just registration, or, without the consent of such corporation or person, unlawfully and intentionally diverts or suffers to be diverted any electrical current from any wire of such corporation or person, or otherwise unlawfully and intentionally uses or causes to be used, without the consent of such corporation or person, any electricity manufactured or distributed by such corporation, or charged to such person, shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Amended by St.1961, c. 290; St.1977, c. 191, § 2.

CHAPTER 165

WATER AND AQUEDUCT COMPANIES

WATER COMPANIES

Sec.
1. Definitions.
1A. Adequacy of distribution system; approval.
1B. Rules and regulations.
3. Powers of department of environmental quality engineering; impairment.

Sec.
4B. Water companies; eminent domain or purchase; waters, water rights, lands and easements.
6. Engineering service and advice furnished by department of environmental quality engineering.
11B. Penalty; shutting off water service to domicile occupied by seriously ill person after notice.
11C. Indebtedness of prior property owner; water supply for new owner.
11D. Entry on premises to examine water meters and facilities.
11E. Shutting off water to non-customer occupants in residential buildings; notice; procedures; payment of amount due; effect of waiver; reprisals; penalties; rules and regulations.

WATER COMPANIES

§ 1. Definitions

In sections one to eleven, inclusive, the following words shall have the following meanings:—

"Corporation" or "company", every person, partnership, association or corporation, other than a municipal corporation, and other than a landlord supplying his tenant, engaged in the distribution and sale of water in the commonwealth through its pipes or mains.

"Department", the department of public utilities.

Amended by St.1962, c. 154.

§ 1A. Adequacy of distribution system; approval

No corporation or company shall engage in the distribution or sale of water in the commonwealth through its pipes or mains unless written approval of the adequacy of its distribution system has first been obtained from the department, and unless proof of compliance with chapter one hundred and eleven has been furnished to the department.

Added by St.1965, c. 385, § 2.

§ 1B. Rules and regulations

The department may establish from time to time such reasonable rules and regulations consistent with this chapter as may be necessary to carry out the administration thereof.

Added by St.1971, c. 243.

§ 3. Powers of department of environmental quality engineering; impairment

This chapter shall not affect or impair the powers and duties of the department of environmental quality engineering with respect to water supply under chapter one hundred and eleven.

Amended by St.1975, c. 706, § 289.

§ 4B. Water companies; eminent domain or purchase; waters, water rights, lands and easements

Any water company or corporation subject to this chapter having franchise rights encompassing an entire city, town or district may, subject to determination by the department after notice and a public hearing as to the public convenience and necessity, and with the advice and consent of the department of environmental quality engineering, take by eminent domain under chapter seventy-nine or acquire by purchase or otherwise and hold the waters, or any portion thereof, of any pond, brook, spring, stream or groundwater sources within its franchise territory not already appropriated for purposes of public water supply, and any water or flowage rights connected therewith, and such lands, rights of way and other easements as may be necessary for collecting, storing, holding, purifying and treating such water and protecting and preserving the purity thereof, and for conveying the same to any place within its franchise territory.

Added by St.1958, c. 353. Amended by St.1975, c. 706, § 290.

§ 6. Engineering service and advice furnished by department of environmental quality engineering

In all proceedings conducted by the department under the laws relating to the petition of any water company for authorization to issue capital stock or bonds, and in all matters connected with the determination by the department of any question relating thereto and before any such authorization is given, the department of environmental quality engineering shall, on request of the department, furnish without charge engineering services and advice for its assistance and guidance in such proceedings.

Amended by St.1975, c. 706, § 291.

§ 11B. Penalty; shutting off water service to domicile occupied by seriously ill person after notice

No water company shall intentionally shut off the water service to any domicile occupied by a person who is seriously ill if the company receives written notice from the municipal health authorities or a registered physician verifying the fact of such illness. Any company violating this section shall be punished by a fine of not more than twenty-five dollars for each day during which the violation continues.

Added St.1957, c. 220.

§ 11C. Indebtedness of prior property owner; water supply for new owner

A water company shall not refuse to supply water to any premises on application of the owner thereof because of the indebtedness of a prior owner to the said water company for water previously furnished to said premises.

Added by St.1957, c. 220.

§ 11D. Entry on premises to examine water meters and facilities

Any person employed by a city, town, district or company engaged in supplying water who displays on his outer garment a suitable identification badge bearing his photograph, issued to him by his employer, may at any reasonable time enter any premises supplied with water by such city, town, district or company for the purpose of examining or removing meters, pipes, fittings and works for supplying or regulating the supply of water and of ascertaining the quantity of water consumed or supplied.

Added St.1961, c. 305, § 2.

§ 11E. Shutting off water to non-customer occupants in residendential buildings; notice; procedures; payment of amount due; effect of waiver; reprisals; penalties; rules and regulations

No water company shall shut off the flow of water to any residential building in which the occupant thereof is not the customer of record of said company, without first complying with the notice provisions of section eleven A and also providing notice to each affected dwelling unit in a manner prescribed by regulation of the department. Such notice shall contain the following information:

(*a*) the amount then due and payable for such water service;

(*b*) the date on or after which such service will be shut off, such date to be not less than fifteen nor more than thirty days, as determined by the department, after the day on which such notice is first given;

(*c*) the date on which said notice is given; and

(*d*) the right of the occupants of such building to pay the amount due or such portion thereof as is prescribed by regulation of the department and thereby avoid a cessation of service, and to recover the amounts so paid from the person to whom they would otherwise pay their rent.

Any employee of such company as provided in section eleven D may, at any reasonable time, enter the common hallways of such building to post or deliver said notice. Any person who removes, interferes, or tampers with such notice of the provisions thereof shall be punished by a fine not to exceed twenty-five dollars.

At any time after the date such notice is given any occupant or occupants of the dwelling units within such building may pay such company the amount due or such portion thereof as is mutually agreed upon by the occupants and the company, provided that where no such agreement is reached, the department shall make a final determination of the amount of said portion, in order to avoid cessation of service. If such final determination by the department is not made prior to the date on which service otherwise would have been terminated, such service shall be continued for a period not to exceed fifteen days, during which time the department shall render said final determination. If such amount is received after service has been shut off, service shall be restored by the company as soon as practicable. Any such occupant who has paid all or any portion of said amount may subsequently recover the amount paid to the company, either by deducting said amount from any rent or payment on account of taxes or operating expenses then or thereafter due from such occupant to the person to whom he would otherwise pay his rent, or by obtaining reimbursement from the person to whom he last paid rent. The company shall, upon receiving any such payment, notify the person liable for service as stated in said notice of the amount or amounts paid by any occupant pursuant to the provisions of this section.

Any waiver of the provisions of this section in any lease or rental agreement shall be void and unenforceable. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any reprisal against any occupant for exercising his rights pursuant to this section.

Any water company wilfully violating the provisions of this section shall be punished by a fine of not more than fifty dollars for each such violation.

The department shall establish from time to time such reasonable rules and regulations consistent with this section as may be necessary for its implementation.

Added by St.1974, c. 270, § 2.

CHAPTER 167

BANKS AND BANKING

GENERAL PROVISIONS

56C. Accounts to receive security deposits for residential real property.

§ 56C. Accounts to receive security deposits for residential real property

Any bank, national banking association, savings and loan association, or federal credit union may establish an account to receive deposits from a lessor acting as a trustee for funds received and held by such trustee pursuant to paragraph (*a*) of subsection (3) of section fifteen B of chapter one hundred and eighty-six. Such account may be established as required by said section fifteen B for the purpose of holding security deposits taken by a lessor of residential dwelling units owned or managed by said lessor, but the terms of said account shall be such as to place said deposit beyond the claim of a creditor of the lessor, including a foreclosing mortgagee or trustee in bankruptcy, and as will provide for the transfer of said deposit to a subsequent owner of any property for which such security deposit was taken. Interest accruing on said deposit shall be paid to the lessor pursuant to the terms of the deposit. Withdrawals and payments made by the bank from said account shall discharge the liability of said bank to all persons.

Added by St.1978, c. 553, § 1. Amended by St.1979, c. 144.

CHAPTER 176B

MEDICAL SERVICE CORPORATIONS

Sec.

1. Definitions.
2. Incorporators; formation; articles of organization; certification.
3. By-laws; contracts with hospital service corporations; joinder of medical service corporations; contracts with governmental agencies.
4. Contracts for medical, chiropractic, visual, surgical, and other health services; approval, subscription certificates; classification of risks.

4A. Mental illness expenses; inclusion as benefits.

4A½. Treatment for alcoholism; inclusion of expenses as benefits.

4B. [Blank].

4C. Dependent coverage for newborn infants or adoptive children; inclusion of medical expenses as benefits.

4D. Refusal to contract with blind or deaf persons; prohibition.

5. Subscribers; qualifications; misrepresentation.
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Sec.
6A. Limited extension of benefits.
7. Contracts between corporation and physician or chiropractor; protection of physician-patient relationship; entitlement of subscribers; termination of contract.
8. Annual statement; verification, form, violations.
8A. Financial statements; inclusion of electronic data processing equipment as asset.
9. Inspection and examination of affairs of corporation; access to information.
10. Investments, sales, loans and places of deposit; approval; acquisition of real estate; leases; tax exemption; limit; special contingent surplus.
11. Salaries, compensation or emoluments.
12. Submission of disputes or controversies to board; review of decision of board.
13. Grounds for enjoining transaction of business; receivers.
14. Liability of corporation; exemption from insurance laws; tax exemption.
15. Repealed.
16. Operators of medical service plan.
16A. Payroll deductions of governmental employees.
17. Enforcement.
18. Contracts for administrative or other services; loans and investments.

§ 1. Definitions

In this chapter the following words shall have the following meanings:

"Commissioner", the commissioner of insurance.

"Covered dependent", a dependent for whose medical or chiropractic care provision is made in a subscription certificate issued by a medical service corporation to a subscriber.

"Dependent", the spouse, child or foster child of a subscriber, or an adult relative dependent upon the subscriber for his support.

"Medical service", the medical services ordinarily provided by registered optometrists and physicians in accordance with accepted practices in the community where the services are rendered.

"Chiropractic service", the chiropractic services ordinarily provided by registered chiropractors in accordance with accepted practices in the community where the services are rendered.

"Visual service", the optometric services ordinarily provided by registered optometrists and physicians in accordance with accepted practices in the community where the services are rendered.

"Medical service", the medical services ordinarily provided by registered physicians in accordance with accepted practices in the community where the services are rendered.

"Nonprofit medical service plan", a plan operated by a medical service corporation under the provisions of this chapter, whereby the cost of medical and chiropractic service and other health services furnished to subscribers and covered dependents is paid by the corporation to subscribers, to participating physicians, to participating chiropractors, and to such other physicians as are provided for herein, and to providers of other health services.

"Participating physician", a registered physician under the provisions of chapter one hundred and twelve who agrees in writing with a medical service corporation to perform medical service for subscribers and covered dependents and to abide by the by-laws, rules and regulations of such corporation.

"Participating chiropractor", a registered chiropractor under the provisions of chapter one hundred and twelve who agrees in writing with a medical service corporation to perform chiropractic service for subscribers and covered dependents and to abide by the by-laws, rules and regulations of such corporation.

"Participating optometrist", a registered optometrist who agrees in writing with a medical service corporation to perform visual service for subscribers and covered dependents and to abide by the by-laws, rules and regulations of such corporation.

"Registered physician", a physician registered to practice medicine in the commonwealth as provided in section two of chapter one hundred and twelve.

"Registered chiropractor", a chiropractor registered to practice chiropractic in the commonwealth as provided in section eighty-nine of chapter one hundred and twelve.

"Subscriber", a person who has subscribed to a non-profit medical service plan and to whom a subscription certificate has been issued in accordance with the provisions of section six.

Added by St.1941, c. 306. Amended by St.1965, c. 442, § 1; St.1968, c. 432, § 8; St.1969, c. 880, § 1; St.1971, c. 543, § 1; St.1978, c. 574, § 1; St.1979, c. 365, § 1.

§ 2. Incorporators; formation; articles of organization; certification

For the purpose of establishing, maintaining and operating a nonprofit medical service plan, seven or more persons may form a medical service corporation. Such a corporation shall be formed in the manner prescribed in and subject to section nine of chapter one hundred and fifty-five and sections six and eight to twelve, inclusive, of chapter one hundred and fifty-six, except as follows:

The agreement of association of a corporation having no capital stock may omit the statement of the amount of the capital stock and the par value and number of its shares. The fee to be paid to the state secretary upon the filing of the articles of organization shall be twenty-five dollars.

The articles of organization specified in section ten of said chapter one hundred and fifty-six, with the records and by-laws of the corporation, shall be submitted to the commissioner instead of to the commissioner of revenue, and he shall have the powers and perform the duties relative thereto specified in section eleven of said chapter one hundred and fifty-six.

The certificate issued by the state secretary under section twelve of said chapter one hundred and fifty-six shall be modified to conform to the requirements of this section.

The commissioner shall not approve the articles of organization of such a corporation until he is satisfied by such examination as he may make and such evidence as he may require, that the incorporators are of good repute and intend in good faith to operate the corporation. He shall execute a certificate of his findings, which shall be attached to the articles of organization prior to the filing thereof with the state secretary.

Added by St.1941, c. 306. Amended by St.1957, c. 698, § 14; St.1978, c. 514, § 216.

§ 3. By-laws; contracts with hospital service corporations; joinder of medical service corporations; contracts with governmental agencies

The by-laws of a medical service corporation may contain any lawful provisions approved by the commissioner and shall provide that a majority of the incorporators or members of the corporation and a majority of the directors shall at all times be persons who are not providers of health services licensed under the laws of the commonwealth and that a majority of the directors shall at all times be persons who are or agree to become subscribers to the nonprofit medical service plan. The by-laws of such a corporation may define the qualifications of those persons eligible to become subscribers as provided in section five. Any such corporation may adopt such rules and regulations as may be consistent with the provisions of this chapter.

Any medical service corporation may contract with a corporation formed under chapter one hundred and seventy-six A for the joint or co-operative administration of their affairs and for the joint or co-operative writing and issuing of subscription certificates.

Any medical service corporation may join with any other medical service corporation organized either under the laws of the commonwealth or of any other state for the purpose of establishing or maintaining an agency or corporation designed to facilitate the provision of medical service for residents of the commonwealth employed by firms having employees located in more than one state and may enter into contracts with such an agency or corporation or with a corporation owned by such an agency or corporation for the joint administration of their business and for the joint and cooperative writing and issuing of certificates, provided that any corporation or agency which is not a nonprofit medical service corporation with which there is joint and cooperative writing and issuing of certificates shall be qualified to do business in the commonwealth.

Any medical service corporation may contract with any agency of the United States of America, of the commonwealth or of any city or town within the commonwealth or with any corporation organized under general or special laws for any of the purposes mentioned in chapter one hundred and eighty for the purpose of providing medical service or other health services or reimbursement for such medical service or other health services.

Added by St.1941, c. 306. Amended by St.1948, c. 359; St.1953, c. 142; St.1953, c. 143; St.1955, c. 186; St.1968, c. 432, § 11; St.1971, c. 543, § 2; St.1979, c. 365, § 2.

§ 4. Contracts for medical, chiropractic, visual, surgical, and other health services; approval, subscription certificates; classification of risks

Any medical service corporation may enter into contracts with its subscribers and with participating physicians, participating chiropractors, participating optometrists, dentists, podiatrists, and other providers of health services licensed under the laws of the commonwealth for such medical, chiropractic, visual, surgical and other health services as may lawfully be rendered by them to subscribers and to their dependents and may pay for such services. The form of agreement with such participating physicians, participating chiropractors, participating optometrists, dentists, podiatrists and other providers of health services and the methods of compensating such participating physicians, participating chiropractors, participating optometrists, dentists, podiatrists and other providers of health services for their services to subscribers or covered dependents shall at all times be subject to the written approval of the commissioner, but no participating physicians or participating chiropractors shall be denied their right to enter into a contract with any medical service corporation by reason of any unfair or arbitrary discrimination.

Any agreement between a medical service corporation and a person whereby such corporation undertakes to furnish benefits for medical service to said person and his covered dependents, if any, shall be considered a non-group medical service agreement. Under such an agreement the form of subscription certificate and the rates charged by such corporation to the subscribers shall be filed with and receive the prior approval of the commissioner. No such agreement shall be approved if he finds that the benefits provided therein are unreasonable in relation to the rate charged, nor if the rates charged are excessive, inadequate or unfairly discriminatory.

Any agreement between a medical service corporation and a group of five or more persons or with the employer, employers or other representatives of such group whereby the medical service corporation undertakes to furnish benefits for medical service to said persons and to their covered dependents, if any, shall be considered a group medical service agrement; provided that eligible persons in a group who are enrollees under a group health maintenance contract, as defined in section one of chapter one hundred seventy-six G, shall be included for purposes of determining the number of persons within a group having a medical service agreement.

Under such a group medical service agreement, subscription certificates and the rates charged by the corporation to the subscribers shall be filed with the commissioner within thirty days after their effective date, and shall be subject to subsequent disapproval by the commissioner if he finds that the benefits provided therein are unreasonable in relation to the rate charged, or that the rates charged are excessive, inadequate or unfairly discriminatory; and provided that group plan contracts issued and rates charged by a nonprofit medical service corporation to its subscribers providing supplemental coverage to medicare shall be subject to the provisions of this section requiring prior filing and prior approval of the commissioner if the subscribers, and not their employer, employers or representatives, are billed directly for such contracts.

Nothing in this section shall be construed to prohibit as unreasonable or unfairly discriminatory the establishment of classifications or modifications of classifications of risks based upon size, expense, management, individual experience, purpose, location or dispersion of hazard or any other reasonable considerations, or to prohibit retrospective refunds. Acquisition costs in connection with the solicitation of subscribers and costs of administration shall at all times be limited to such amounts as the commissioner shall approve.

Added by St.1941, c. 306. Amended by St.1950, c. 472; St.1959, c. 130; St.1960, c. 307, § 1; St.1965, c. 442, § 2; St.1968, c. 432, § 9; St.1970, c. 443, §§ 33, 34; St.1971, c. 543, § 3; St.1976, c. 454, § 5; St.1978, c. 361, § 2; St.1978, c. 574, § 2.

§ 4A. Mental illness expenses; inclusion as benefits

Any subscription certificate under an individual or group medical service agreement which shall be delivered or issued or renewed in this commonwealth shall provide as benefits to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth for expense rising from mental or nervous conditions as hereinafter set forth. Such benefits shall be as described in the standard nomenclature of the American Psychiatric Association which are at least equal to the following minimum requirements:

(*a*) In the case of benefits based upon confinement as an inpatient in a mental hospital under the direction and supervision of the department of mental health, or in a private mental hospital licensed by the department of mental health, the period of confinement for which benefits shall be payable shall be at least sixty days in any calendar year.

(*b*) In the case of benefits based upon confinement as an inpatient in a licensed or accredited general hospital, such benefits shall be no different than for any other illness.

(*c*) In the case of out-patient benefits, these shall cover, to the extent of five hundred dollars over a twelve-month period, services furnished (1) by a comprehensive health service organization, (2) by a licensed or accredited hospital (3) or subject to the approval of the department of mental health services furnished by a community mental health center or other mental health clinic or day care center which furnishes mental health services or (4) consultations or diagnostic or treatment sessions, provided that such services under this clause are rendered by a psychotherapist or by a psychologist licensed under the provisions of chapter one hundred and twelve. For purposes of this clause "psychotherapist" shall mean a person fully licensed to practice medicine under the provisions of chapter one hundred and twelve, who devotes a substantial portion of his time to the practice of psychiatry.

Added by St.1973, c. 1174, §§ 5, 6.

§ 4A½. Treatment for alcoholism; inclusion of expenses as benefits

Any subscription certificate under an individual or group medical service agreement, except certificates which provide supplemental coverage to Medicare or other governmental programs, which shall be delivered or issued or renewed in this commonwealth shall provide as benefits to all individual subscribers and members within the commonwealth and to all group members having a principal place of employment within the commonwealth, for expense for the treatment of alcoholism as hereinafter set forth:

(*a*) In the case of benefits based upon confinement as an inpatient in an accredited or licensed hospital or in any other public or private facility thereof providing services especially for the detoxification or rehabilitation of intoxicated persons or alcoholics and which is licensed by the department of public health for those services, such benefits shall be at least thirty days in any calendar year.

(*b*) In the case of outpatient benefits these shall cover, to the extent of five hundred dollars over a twelve month period, services furnished by an accredited or licensed hospital, or by any public or private facility or portion thereof providing services especially for the rehabilitation of intoxicated persons or alcoholics and which is licensed by the department of public health for those purposes. Consultations or treatment sessions furnished by a facility in this clause shall be rendered by a physician or psychotherapist fully licensed under the provisions of chapter one hundred and twelve who devotes a substantial portion of his time treating intoxicated persons or alcoholics. For purposes of this clause "psychotherapist" shall mean a person fully licensed to practice medicine under the provisions of said chapter one hundred and twelve and who devotes a substantial portion of his time to the practice of psychiatry.

Added by St.1973, c. 1221, §§ 5, 6. Amended by St.1977, c. 504, § 1. Renumbered and amended by St.1979, c. 526.

§ 4B. [Blank]

§ 4C. Dependent coverage for newborn infants or adoptive children; inclusion of medical expenses as benefits

Any subscription certificate, which provides for dependent coverage, under an individual or group medical service agreement which shall be delivered or issued for delivery or subsequently renewed in the commonwealth shall include as insured members, newborn infants and newborn infants of a dependent of a subscription certificate holder immediately from the moment of birth and thereafter and shall also include as insured members adoptive children of a subscription certificate holder immediately from the date of the filing of a petition to adopt under chapter two hundred and ten and thereafter if the child has been residing in the home of the subscription certificate holder as a foster child for whom the holder has been receiving foster care payments, or, in all other cases, immediately from the date of placement by a licensed placement agency of a child for purposes of adoption in the home of the subscription certificate holder and thereafter. Such insurance shall provide benefits for expense arising from illness, injury, congenital malformation, or premature birth. If payment of a subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born child or of filing of a petition to adopt a foster child or of placement of a child for purposes of adoption and payment of the required fees must be furnished to the non-profit service corporation. For the purposes of this section, "notification" may mean submission of a claim.

Added by St.1974, c. 785, § 3. Amended by St.1975, c. 196, § 3. Renumbered by St.1976, c. 203, § 2.

§ 4D. Refusal to contract with blind or deaf persons; prohibition

No corporation subject to this chapter shall refuse for the reason of blindness or deafness, to contract with a subscriber a subscription certificate under an individual medical service agreement.

Added by St.1975, c. 595, § 3. Renumbered by St.1976, c. 203, § 3.

§ 5. Subscribers; qualifications; misrepresentation

Any person residing in the commonwealth shall have the right to become a subscriber of a medical service corporation if his qualifications meet those specified in the by-laws of such corporation, provided that such a corporation may, in its discretion, refuse to issue a subscription certificate to, or upon due notice cancel the subscription certificate of, any person who has made any fraudulent claim or representation to the corporation or to a participating physician, or has been guilty of uncoöperative or unethical dealings with the corporation, or has failed to pay dues and assessments seasonably and promptly or for any other cause which may be approved by the commissioner.

Added by St.1941, c. 306.

§ 6. Subscription certificate; issuance; content

A subscription certificate shall be issued by a medical service corporation to each non-group subscriber. No subscription certificate shall be issued unless the commissioner shall have approved in writing the form of certificate nor unless it contains in substance the following provisions:—

(*a*) A statement of the medical service to be paid for by the corporation, and if any medical service is excepted, a statement of such exception.

(*b*) A statement of the duration of the agreement and of the terms and conditions upon which it may be extended, renewed, revised, canceled or otherwise terminated.

(*c*) A statement of the period of grace which will be allowed for making any payment due from the subscriber under the contract, which in any event shall not be less than ten days.

(*d*) A statement that any child who is mentally or physically incapable of earning his own living who is eligible for services by membership of his parent under a family contract shall be eligible under the membership of his parent as a member of such family contract so long as he continues to be mentally or physically incapable of earning his own living, without any limitation as to age, subject, however, to such rules and regulations, premiums or additional premiums as the commissioner of insurance may approve.

(*e*) A statement that within fifteen days after receipt by the corporation of notice by a subscriber, or someone acting on his behalf, that such subscriber or a covered dependent of such subscriber has received services for which the subscriber is entitled to direct payment of benefits under a subscription certificate, the corporation shall furnish the subscriber such forms as are usually furnished by it to establish a subscriber's entitlement to such benefits; and that within forty-five days after receipt by the corporation of completed forms for such benefits, the corporation will (*i*) make payment for such benefits, (*ii*) notify the subscriber in writing of the reason or reasons for nonpayment, or (*iii*) notify the subscriber in writing of what additional information or documentation is necessary to establish entitlement to such benefits.

Added by St.1941, c. 306. Amended by St.1957, c. 115, § 1; St.1960, c. 307, § 2; St.1974, c. 732, § 2.

§ 6A. Limited extension of benefits

Whenever a subscriber or a group non-profit medical service plan, other than the one authorized under the provisions of chapter thirty-two A or chapter thirty-two B, becomes ineligible for continued participation in such group plan because of involuntary lay-off or death, the coverage originally provided by such plan for the subscriber and his dependents shall be continued as provided herein for a period of thirty-nine weeks from the date of such ineligibility or until such subscriber and his dependents become eligible for benefits under another group plan, whichever occurs first but in no event shall such continuation period exceed the period during which the member was most recently covered under such group plan. The employer or policyholder shall notify the involuntary laid-off member, surviving spouse of a deceased member and dependents of their eligibility to participate in such plans. The involuntary laid-off member, surviving spouse of a deceased member and dependents may elect to continue participation in such plan by giving at least thirty days written notice thereof to the employer or policyholder. Such member or surviving spouse or dependents, as the case may be, shall be responsible for the payment of the whole premium due for such coverage, including any and all amounts normally paid by the employer as employee's benefits, to the employer or policyholder throughout the extension period. After timely receipt of the premium payment from the responsible individual, if the employer or certificate holder fails to make payment to the insurer or hospital or medical service corporation with the result that coverage is terminated, the employer or certificate holder shall be liable for benefits to the same extent as the insurer or hospital or medical service corporation would have been liable if coverage had not been terminated. Timely receipt of premium payment shall mean the employer's or certificate holder's receipt of the premium or subscription fee for the extended coverage for such member or dependents within the dates or by the date indicated by the employer at the time of the election of extended coverage. Failure to give such notice or to make premium payments as hereinabove provided shall constitute a waiver of the option to have such extended coverage.

Added by St.1976, c. 371, § 3. Amended by St.1979, c. 743, § 3.

§ 7. Contracts between corporation and physician or chiropractor; protection of physician-patient relationship; entitlement of subscribers; termination of contract

Every registered physician and every registered chiropractor shall have the right, on complying with such rules and regulations as the corporation may make, to enter into a written agreement with a medical service corporation, doing business in the city or town where the said physician or chiropractor resides or has his usual place of business, to perform medical or chiropractic services. This chapter shall not change the normal relations between physician or chiropractor and patient. No restriction shall be placed by any such corporation upon its participating physicians or participating chiropractors as to methods of diagnosis or treatment. No officer, agent, or employee of a medical service corporation shall influence or attempt to influence a subscriber or a covered dependent in his choice of a participating physician or participating chiropractor. A subscriber or a covered dependent, subject to the by-laws, rules and regulations of a medical service corporation and the terms and provisions of his subscription certificate, shall be entitled to the benefits of this chapter upon receiving medical or chiropractic service from any participating physician or participating chiropractor or, in the discretion of the corporation, upon receiving medical or chiropractic service from any non-participating physician or chiropractor in an emergency or when outside the commonwealth. A corporation may terminate its agreement with any participating physician or participating chiropractor at any time (*a*) for failure to comply with the reasonable rules and regulations of such corporation, including without limitation such rules and regulations as may be adopted governing the keeping of accounts, records and statistics, the making of reports and proof of services rendered, or (*b*) for presenting any fraudulent, unreasonable, or improper claim for payment, or compensation.

Nothing in section four or in this section shall be construed to prohibit any medical service corporation from entering into written agreements with its subscribers and with participating chiropractors to furnish chiropractic services to subscribers and covered dependents or from including chiropractic services in its nonprofit medical service plan, nor shall any medical service corporation discriminate in any way against participating chiropractors in the furnishing of chiropractic service to its subscribers and covered dependents.

Added by St.1941, c. 306. Amended by St.1971, c. 434, § 1; St.1978, c. 574, § 3.

§ 8. Annual statement; verification, form, violations

Every medical service corporation shall annually, on or before the first day of March, file in the office of the commissioner a statement, verified by at least two of the principal officers of said corporation, showing its condition as of the thirty-first day of December next preceding. Such statement shall be in such form and shall contain such matters as the commisioner shall prescribe. A corporation neglecting to file its annual statement within the time herein specified shall forfeit one hundred dollars for each day during which such neglect continues, and upon notice by the commissioner to that effect, its authority to do business shall cease while such default continues.

Added by St.1941, c. 306.

§ 8A. Financial statements; inclusion of electronic data processing equipment as asset

In an account of its financial condition, a medical service corporation may include as an asset available for the payment of losses electronic data processing equipment, provided that the cost of such equipment at the time of acquisition is at least one hundred thousand dollars and that said cost is to be amortized in full over a period not to exceed ten years.

Added by St.1973, c. 455, § 2.

§ 9. Inspection and examination of affairs of corporation; access to information

The commissioner, or any deputy examiner or any other person designated by the commissioner, shall, at least once in three years, and whenever the commissioner deems it prudent, visit any medical service corporation and examine into its affairs. The commissioner shall have free access to all of the books, records and papers of the corporation, and may summon and examine under oath its officers, agents, employees and other persons in relation to its affairs and condition. The commissioner shall require every such corporation to keep its books, records, accounts and vouchers in such manner that he or his authorized representatives may readily verify its annual statements and determine whether the corporation has complied with the law.

Added by St.1941, c. 306.

§ 10. Investments, sales, loans and places of deposit; approval; acquisition of real estate; leases; tax exemption; limit; special contingent surplus

No investment, sale or loan shall be made by a medical service corporation which has not first been authorized by the board of directors, or by a committee thereof charged with the duty of investing or loaning the funds of the corporation; nor shall any deposit be made in a bank or banking institution unless such bank or banking institution has first been approved as a bank of deposit by the board of directors or said committee thereof, and unless the vote authorizing such investment, sale or loan or approval of the place of deposit has been duly recorded in the books of the corporation.

With the approval of the commissioner, a medical service corporation, alone or with one or more nonprofit corporations, the real estate of which is exempt from taxation, may acquire real estate it reasonably expects to use in whole or in part for conducting the business of such corporation or corporations. Real estate so acquired may be leased to other occupants, and when so leased, the exemption from taxation on real estate granted by this chapter or granted by any provisions of the general laws to a co-owner shall not apply to that portion of the real estate which is so leased unless such other occupant occupies the leased premises for its purposes and is (*a*) a charitable organization, as defined in section five of chapter fifty-nine, or (*b*) a nonprofit corporation organized under the laws of the commonwealth to provide any kind of health services, the real estate of which is exempt from taxation. Nothing in this paragraph shall limit the general investment powers set forth in this section.

The commissioner may require any such corporation after the first full year of doing business to accumulate and maintain a special contingent surplus, over and above its reserves and liabilities, in such amount as the commissioner may deem proper.

A medical service corporation may invest in, acquire and hold the capital stock of any corporation as a subsidiary which is an insurance company authorized to transact the business of providing health insurance to persons residing outside the commonwealth, and which is duly licensed by the commissioner of insurance, provided that the medical service corporation shall notify the commissioner at least thirty days prior to entering into any agreement or contract to make such investment or acquisition.

Added by St.1941, c. 306. Amended by St.1950, c. 394, § 1; St.1954, c. 276, § 1; St.1961, c. 493, § 27; St.1968, c. 432, § 6; St.1972, c. 663, § 2; St. 1977, c. 341.

§ 11. Salaries, compensation or emoluments

No medical service corporation shall pay any salary, compensation or emolument to any officer, trustee or direcotr thereof, nor any salary, compensation or emolument amounting in any year to more than twenty thousand dollars to any person, unless such payment be first authorized by a vote of its board of directors; provided, however, that the amount of such salaries, compensation or emoluments may be adjusted by the corporation to exceed such amount to reflect any decrease or increase in the cost of living since January first, nineteen hundred and sixty-nine, as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers, United States City Average, published by the Bureau of Labor Statistics of the United States Department of Labor. No such corporation shall make any agreement with any of its officers, trustees or employees whereby it agrees that for any services rendered or to be rendered he shall receive any salary, compensation or emolument for a period of more than three years from the date of such agreement; provided, however, that the payment of an amount not in excess of twelve and one half per cent of such annual salary, compensation or emolument, or a larger percentage if approved by the commissioner, may be deferred beyond such period.

Added by St.1941, c. 306. Amended by St.1968, c. 432, § 7; St.1978, c. 402, § 2.

§ 12. Submission of disputes or controversies to board; review of decision of board

Any dispute or controversy arising between a medical service corporation and any participating physician, participating chiropractor, or any subscriber, or any person whose subscription certificate has been canceled or to whom such corporation has refused to issue such certificate may within thirty days after such dispute or controversy arises be submitted by any person aggrieved to a board serving in the division of insurance and consisting of the commissioner or a person designated by him, the chairman of the board of registration and discipline in medicine or any person designated by him, and the attorney general or a person designated by him, for its decision with respect thereto. All decisions and orders of the board or of the commissioner made under any provision of this chapter may be revised as justice and equity may require upon a petition in equity filed, within ten days after the promulgation of such decision or order in the superior court within and for the county of Suffolk by any party aggrieved by such decision or order.

Added by St.1941, c. 306. Amended by St.1977, c. 504, § 2; St.1978, c. 574, § 4.

§ 13. Grounds for enjoining transaction of business; receivers

If the commissioner is satisfied, as to any medical service corporation, that (1) it has failed to comply with the provisions of its charter, or (2) it is being operated for profit, or (3) it is fraudulently conducted, or (4) its condition is such as to render its further transaction of business hazardous to the public or to its subscribers, or (5) its officers and agents have refused to submit to an examination under section nine, or (6) it has exceeded its powers, or (7) it has violated any provision of law, or (8) it has compromised, or is attempting to compromise, with its creditors on the ground that it is financially unable to pay its claims in full, or (9) it is insolvent, he may apply to the supreme judicial court for an injunction restraining it from further proceeding with its business.

If the right of any person or group of persons to become a participating physician or participating chiropractor as defined in section one is denied because of arbitrary or unfair discrimination, any such person or group of persons so aggrieved may apply to the supreme judicial court for an injunction restraining it from further proceeding with its business.

The court may, after application by the commissioner or any person or group of persons aggrieved as aforesaid, forthwith issue a temporary injunction restraining the transaction of any business, and it may, after a full hearing, make the injunction permanent, and appoint one or more receivers to take possession of the books, papers, moneys and other assets of the corporation, settle its affairs, and distribute its funds to those entitled thereto, subject to such rules and orders as the court may prescribe.

Added by St.1941, c. 306. Amended by St.1978, c. 434, § 2; St.1978, c. 574, § 5.

§ 14. Liability of corporation; exemption from insurance laws; tax exemption

Every medical service corporation is hereby declared to be a charitable corporation. No such corporation shall be liable for injuries resulting from negligence or malpractice on the part of any participating physician or of any of its employees, nor shall it be liable for the cost of medical services to which the subscriber or covered dependent may be entitled under the provisions of any workmen's compensation law. Every such corporation shall be exempt from all provisions of the insurance laws of the commonwealth, except as otherwise provided in this chapter. The property of every such corporation shall, except as hereinafter provided, be exempt from all state and local taxes.

Added by St.1941, c. 306.

§ 15. Repealed. St.1951, c. 797.

§ 16. Operators of medical service plan

It shall be unlawful for any person, firm, corporation or association, except a medical service corporation, to establish, maintain or operate a non-profit medical service plan; provided, however, that this chapter shall not render unlawful or affect any operation or activity of any company organized under the provisions of chapter one hundred and seventy-five, of any society or fraternal benefit society organized under the provisions of chapter one hundred and seventy-six or subject to any of the provisions thereof, of any non-profit hospital service or medical service corporation organized under the provisions of chapter one hundred and seventy-six A or one hundred and seventy-six C, or of any corporation organized or to be organized under chapter one hundred and eighty, the existence, purposes, activities and operations of which were lawful or would be lawful notwithstanding the provisions of this chapter.

Added by St.1941, c. 306.

§ 16A. Payroll deductions of governmental employees

The pertinent provisions of section one hundred and thirty-eight A of chapter one hundred and seventy-five shall apply to deductions on payroll schedules from the salary of any state, county or municipal employee for the payment of the amount payable by such an employee under a subscription certificate issued to him as a subscriber by a medical service corporation.

Added by St.1943, c. 424, § 6.

§ 17. Enforcement

The provisions of this chapter may be enforced by a bill in equity brought in the supreme judicial court by the commissioner, the attorney general, any district attorney or any aggrieved party.

Added by St.1941, c. 306. Amended by St.1971, c. 434, § 3.

§ 18. Contracts for administrative or other services; loans and investments

Any medical service corporation may contract with any person for the purpose of providing administrative or other services relating to the providing of medical or other health services or reimbursement therefor. In addition, with the approval of the commissioner who shall consider the effect upon subscriber agreements and subscriber rates, a medical service corporation may, after being authorized by its board of directors, or by a committee thereof, charged with the duty of authorizing transactions under this section, make loans to, guarantee loans of and make investments in hospitals and providers of other health services for the purpose of improving efficiency, reducing costs, or increasing benefits in the delivery of health services to subscribers and others.

Added by St.1976, c. 308.

CHAPTER 180

CORPORATIONS FOR CHARITABLE AND CERTAIN OTHER PURPOSES

GENERAL PROVISIONS

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MEDICAL CORPORATION

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GENERAL PROVISIONS

§ 1. Application of chapter

This chapter shall apply to all corporations whenever established, except so far as such application may be inconsistent with provisions still in force of any special acts of incorporation, enacted before March eleventh, eighteen hundred and thirty-one, and not subject to amendment, alteration or repeal by the general court, or with provisions of any special acts of incorporation enacted after October first, nineteen hundred and seventy-one.

All corporations existing on October first, nineteen hundred and seventy-one and their directors, officers, members and stockholders shall be entitled to all the rights, privileges and immunities and be subject to all the liabilities set forth in this chapter to the same extent as corporations formed under this chapter and their directors, officers and members; provided that this chapter shall not take away or impair any remedy which may exist by law against a corporation existing on said date, its directors, officers, members or stockholders, for a liability incurred prior thereto.

All corporations shall be subject to such laws as may be enacted after October first, nineteen hundred and seventy-one affecting or altering their corporate rights or duties or dissolving them.

Added by St.1971, c. 819, § 3.

§ 2. Definitions

In this chapter the following words shall, unless a contrary intention appears, have the following meanings:

(*a*) "articles of organization", the articles of organization of a corporation, including any special acts, as from time to time restated or amended, including articles of merger or consolidation;

(*b*) "by-laws", the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;

(*c*) "corporation", a domestic corporation (*i*) heretofore established either by general or special law for any one or more of the purposes mentioned in section four or (*ii*) organized under this chapter on or after October first, nineteen hundred and seventy-one;

(*d*) "directors" or "board of directors", the directors of a corporation, including persons and officers having the powers of directors;

(*e*) "member", one having membership rights, whether or not designated as a member, in a corporation in accordance with the provisions of its articles of organization or by-laws.

Added by St.1971, c. 819, § 3.

MEDICAL CORPORATION

§ 13. Conferring degrees, or issuing diplomas or certificates; prohibition

A corporation organized under this chapter for medical purposes shall not confer degrees, or issue diplomas or certificates conferring or purporting to confer degrees, unless specially authorized thereto by the general court. An officer, agent or servant of such corporation or any other person who confers degrees, or signs, issues or authorizes the signing or issuing of any diploma or certificate purporting to confer any degree of medicine or surgery, in violation hereof, shall be punished by a fine of not less than five hundred nor more than one thousand dollars.

MEDICAL MILK COMMISSION

§ 20. Formation; definition

For the purpose of supervising the production of milk, any five or more registered physicians may form a corporation under this chapter. The members of the board of health of any town where such corporation is formed shall be ex officiis members of the corporation. At least one member of said board of health shall be a member of the board of directors thereof.

For the purposes of this section and sections twenty-one to twenty-five, inclusive, the word "milk" shall include goats' milk.

Amended by St.1961, c. 301, § 2.

§ 21. Name

The name of any such corporation shall be "Medical Milk Commission of   ", designating the name of the town where such corporation is established, and, if more than one such corporation shall be organized in any town, the subsequent corporations shall use the name designated herein, but shall indicate in such name its proper sequence in incorporation by adding thereto the words "Number Two" or "Number Three" and so forth.

§ 22. Salary emolument or compensation received by member from dairymen

No member of any such corporation shall receive directly or indirectly therefrom, or from any dairymen producing milk under agreement with the corporation, any salary or emolument or any compensation of any kind for any services rendered as a member of such corporation, or for any services rendered under sections twenty to twenty-five, inclusive. Whoever violates this section shall be punished by a fine of one hundred dollars, and shall be removed from his office as a member of said corporation and thereafter be disqualified from becoming a member of any such corporation.

§ 23. Contracts for production of milk

Every such corporation may enter into written agreements with any dairymen for the production of milk under the supervision of such corporation and prescribe in such agreements the conditions under which such milk shall be produced, which, however, shall be approved by the department of public health and shall not fall below the standards of purity and quality for certified milk as fixed by the American Association of Medical Milk Commissions and the standards for milk fixed by law.

§ 24. Investigatory powers of department of public health

The working methods of any such corporation and the dairies in which milk is produced under contract with it shall at all times be subject to investigation by the department of public health.

§ 25. Violations; penalty

Whoever sells or exchanges, or offers or exposes for sale or exchange as and for certified milk any milk not conforming to the regulations prescribed by and bearing the certification of a corporation organized under sections twenty to twenty-five, inclusive, shall be punished by a fine of not more than one hundred dollars.

PART II

REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS

TITLE I

TITLE TO REAL PROPERTY

CHAPTER 183

ALIENATION OF LAND

CONVEYANCE BY DEED

Sec.
4. Effect of recordation or actual notice of deeds or leases, or of assignments of rents or profits.

CONVEYANCE BY DEED

§ 4. Effect of recordation or actual notice of deeds or leases, or of assignments of rents or profits

A conveyance of an estate in fee simple, fee tail or for life, or a lease for a term of seven years,[1] or an assignment of rents or profits from an estate or lease, shall not be valid as against any person, except the grantor or lessor, his heirs and devisees and persons having actual notice of it, unless it, or an office copy as provided in section thirteen of chapter thirty-six, or, with respect to such a lease or an assignment of rents or profits, a notice of lease or a notice of assignment of rents or profits, as hereinafter defined, is recorded in the registry of deeds for the county or district in which the land to which it relates lies. A "notice of lease", as used in this section, shall mean an instrument in writing executed by all persons who are parties to the lease of which notice is given and shall contain the following information with reference to such lease:—the date of execution thereof and a description, in the form contained in such lease, of the premises demised, and the term of such lease, with the date of commencement of such term and all rights of extension or renewal. A "notice of assignment of rents or profits", as used in this section, shall mean an instrument in writing executed by the assignor and containing the following information:—a description of the premises, the rent or profits of which have been assigned, adequate to identify the premises, the name of assignee, and the rents and profits which have been assigned. A provision in a recorded mortgage assigning or conditionally assigning rents or profits or obligating the mortgagor to assign or conditionally assign existing or future rents or profits shall constitute a "notice of assignment of rents or profits".

Amended by St.1941, c. 85; St.1973, c. 205.

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[1] So in enrolled bill of St.1973, c. 205. Read "or a lease for more than seven years from the making thereof" in G.L.1932 (Ter.Ed.) and St.1941, c. 85.

CHAPTER 183A

CONDOMINIUMS

Sec.

1. Definitions.
4. Exclusive ownership and possession; restrictions.
5. Interest in common areas or facilities; percentage; division.
10. Corporation, trust or association; interest of unit owner; powers and duties; manager or managing agent; by-laws; records; effect of recorded certificate.
11. By-laws; mandatory provisions.
13. Claims involving common areas and facilities; liability.
18. Improvements; costs.
19. Removal from provisions of this chapter.
20. Municipal participation in condominium organization and ownership.
21. Multiple family condominium units; by-laws; master deed.

§ 1. Definitions

As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:—

"Building", any building containing one or more units comprising a part of the condominium.

"By-laws", the by-laws of the organization of unit owners.

"Common areas and facilities" shall, except as otherwise provided or stipulated in the master deed, mean and include:—

(1) The foundations, columns, girders, beams, supports, party walls, common walls, main walls, roofs, halls, corridors, lobbies, public stairs and stairways, fire escapes and entrances and exits of the building;

(2) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(3) The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(4) The land on which the building is located;

(5) The basements, yards, lawns, gardens, recreational facilities, parking areas and storage spaces;

(6) The premises for the lodging of custodian or persons in charge of the condominium;

(7) Such community and commercial facilities as may be provided for in the master deed as being owned in common.

(8) All other parts of the condominium necessary or convenient to its existence, maintenance and safety, or normally in common use.

"Common expenses", the expenses of administration, maintenance, repair or replacement of the common areas and facilities, and expenses declared common expenses by this chapter.

"Common funds", all funds held by the organization of unit owners.

"Common profits", the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

"Condominium", the land, the building or buildings, all other improvements and structures thereon, and all easements, rights and appurtenances belonging thereto, which have been submitted to the provisions of this chapter.

"Master deed", the instrument by which the condominium is submitted to the provisions of this chapter, as hereinafter provided, and any amendment to said instrument.

"Organization of unit owners", the corporation, trust or association owned by the unit owners and used by them to manage and regulate the condominium.

Any given "percentage of unit owners" means the owners of that percentage in the aggregate in interest of the undivided ownership of the common areas and facilities.

"Unit", a part of the condominium including one or more rooms, with appurtenant areas such as balconies, terraces and storage lockers if any are stipulated in the master deed as being owned by the unit owner, occupying one or more floors or a part or parts thereof, including the enclosed space therein, intended for any type of use, and with a direct exit to a street or way or to a common area leading to a street or way.

"Unit designation", the number, letter or combination thereof designating the unit in the master deed.

"Unit owner", the person or persons owning a unit.

Added by St.1963, c. 493, § 1. Amended by St.1967, c. 868; St.1969, c. 564; St.1970, c. 139, § 1; St.1972, c. 595; St.1972, c. 709, §§ 1, 2.

§ 4. Exclusive ownership and possession; restrictions

Each unit owner shall be entitled to the exclusive ownership and possession of his unit, subject to the provisions of this section and of sections seventeen, eighteen and nineteen; provided, however, that:—

(1) No unit shall be devoted to a use prohibited in the master deed;

(2) The organization of unit owners, its agent or agents shall have access to each unit from time to time during reasonable hours for the maintenance, repair or replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another unit or units; and

(3) Each unit owner shall comply with the by-laws and with any administrative rules and regulations adopted pursuant thereto, as either of the same may be amended from time to time, and with the lawful covenants, conditions and restrictions set forth in the master deed or in the deed to his unit.

Added by St.1963, c. 493, § 1.

§ 5. Interest in common areas or facilities; percentage; division

(*a*) Each unit owner shall be entitled to an undivided interest in the common areas and facilities in the percentage set forth in the master deed. Such percentage shall be in the approximate relation that the fair value of the unit on the date of the master deed bears to the then aggregate fair value of all the units.

(*b*) The percentage of the undivided interest of each unit owner in the common areas and facilities as expressed in the master deed shall not be altered without the consent of all unit owners, expressed in an amended master deed duly recorded. The percentage of the undivided interest in the common areas and facilities shall not be separated from the unit to which it appertains, and shall be deemed to be conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(*c*) The common areas and facilities shall remain undivided and no unit owner or any other person shall bring any action for partition or division of any part thereof, except as provided in sections seventeen, eighteen and nineteen. Any covenant or provision to the contrary shall be null and void.

(*d*) Each unit owner may use the common areas and facilities in accordance with their intended purposes without being deemed thereby to be hindering or encroaching upon the lawful rights of the other unit owners.

(*e*) The necessary work of maintenance, repair and replacement of the common areas and facilities shall be carried out as provided in the by-laws.

(*f*) Unless the by-laws otherwise provide, whenever the common areas and facilities shall require emergency works of repair, replacement or maintenance, any unit owner may undertake the same at his expense and recover his reasonable costs as a common expense.

(*g*) No work which would jeopardize the soundness or safety of the building shall be done in a unit or in the common areas and facilities unless in every such case the unanimous consent of all unit owners is first obtained.

Added by St.1963, c. 493, § 1.

§ 10. Corporation, trust or association; interest of unit owner; powers and duties; manager or managing agent; by-laws; records; effect of recorded certificate

(*a*) Each unit owner shall have the same percentage interest in the corporation, trust or unincorporated association provided for in the master deed for the management and regulation of the condominium as his proportionate interest in the common areas and facilities. Such interest shall not be separated from ownership in the unit to which it appertains and shall be deemed conveyed or encumbered with the unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

(*b*) Such corporation, trust or association shall have, among its other powers, the following rights and powers:—

(1) To lease, manage, and otherwise deal with such community and commercial facilities as may be provided for in the master deed as being common areas and facilities.

(2) To own, convey, encumber, lease and otherwise deal with units conveyed to it or purchased by it as the result of enforcement of the lien for common expenses, any right of first refusal, or otherwise.

(3) To obtain insurance on the common areas and facilities. Such insurance coverage shall be written in its name, and the provisions thereof shall be without prejudice to the right of each unit owner to insure his own unit for his own benefit.

(4) To conduct litigation and to be subject to suit as to any course of action involving the common areas and facilities or arising out of the enforcement of the by-laws, administrative rules or restrictions in the master deed.

The expenses incurred in and proceeds accruing from the exercise of the aforesaid rights and powers shall be common expenses and common profits.

(*c*) The organization of unit owners may, if the by-laws so provide, appoint a manager or managing agent to administer the condominium. Such manager or agent or the president may, when so empowered, act for the organization and references herein to the organization of unit owners shall include such person when so empowered.

(*d*) The organization of unit owners shall keep a complete copy of the by-laws, including the amendments thereto, if any. The by-laws, the minute book, financial records, and vouchers authorizing payments shall be available for inspection by any unit owner during reasonable hours. A written report of receipts and expenditures shall be rendered to all unit owners at least once annually. Records of the receipts and expenditures affecting the common areas and facilities shall specify and itemize the maintenance and repair expenses of the common areas and facilities, and any other expenses incurred.

(*e*) If the organization of unit owners is a trust or unincorporated association, an instrument signed by a majority of the trustees or of the managing board named in the master deed and duly attested as the act of such trust or association may be relied on as conclusively establishing that such instrument was the free act of the trust or association, and shall be binding upon such trust or association when recorded. No purchaser, mortgagee, lender or other person dealing with the trustees or the managing board of the association, as they appear of record, shall be bound to ascertain or inquire further as to the persons who are then trustees or members of the managing board nor be affected by any notice, implied or actual, relative thereto, other than a recorded certificate thereof, and such recorded certificate shall be conclusive evidence of the personnel of said trustees or members of the managing board and of any changes therein.

Added by St.1963, c. 493, § 1.

§ 11. By-laws; mandatory provisions

In addition to other provisions required or permitted by law, the by-laws of the organization of unit owners shall provide at all times for at least the following:—

(*a*) The method of providing for the necessary work of maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.

(*b*) The manner of collecting from the unit owners their share of the common expenses.

(*c*) The procedure for hiring all personnel, including whether or not a manager or managing agent may be engaged.

(*d*) The method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(*e*) Such restrictions on and requirements respecting the use and maintenance of the units and the use of the common areas and facilities, not set forth in the master deed, as are designed to prevent unreasonable interference with the use of their respective units and of the common areas and facilities by the several unit owners.

Added by St.1963, c. 493, § 1.

§ 13. Claims involving common areas and facilities; liability

All claims involving the common areas and facilities shall be brought against the organization of unit owners, and all attachments and executions related to such claims shall be made only against common funds or property held by the organization of unit owners and not against the common areas and facilities themselves. After such common funds and property have been exhausted, individual unit owners shall be liable for the balance due, if any, provided, however, that the amount for which a unit owner is liable shall be limited to a sum equal to the amount of his percentage interest in the common areas and facilities times the balance due.

Added by St.1963, c. 493, § 1.

§ 18. Improvements; costs

(*a*) If fifty per cent or more but less than seventy-five per cent of the unit owners agree to make an improvement to the common areas and facilities, the cost of such improvement shall be borne solely by the owners so agreeing.

(*b*) Seventy-five per cent or more of the unit owners may agree to make an improvement to the common areas and facilities and assess the cost thereof to all unit owners as a common expense, but if such improvement shall cost in excess of ten per cent of the then value of the condominium, any unit owner not so agreeing may apply to the superior court of the county in which the property is located, on such notice to the organization of unit owners as the court shall direct, for an order directing the purchase of his unit by the organization of unit owners at fair market value thereof as approved by the court. The cost of any such purchase shall be a common expense.

Added by St.1963, c. 493, § 1.

§ 19. Removal from provisions of this chapter

(*a*) Seventy-five per cent of the unit owners, or such greater percentage as is stipulated in the by-laws, may remove all of a condominium or portion thereof from the provisions of this chapter by an instrument to that effect, duly recorded, provided that the holders of all liens upon any of the units affected consent thereto by instruments duly recorded. Upon such removal, the condominium, including all the units, or the portion thereof thus removed shall be owned in common by the unit owners and the organization of unit owners shall be dissolved, unless it is otherwise provided in the removal instrument. The undivided interest in the property owned in common held by each unit owner shall be equal to the percentage of the undivided interest of such owner in the common areas and facilities.

(*b*) Such removal shall not bar the subsequent resubmission of the land and buildings involved to the provisions of this chapter.

Added by St.1963, c. 493, § 1.

§ 20. Municipal participation in condominium organization and ownership

Notwithstanding any other provision of general or special law, a city or town may own a unit of a condominium under this chapter, participate in the organization of unit owners and be liable for its share of the common expenses of the condominium. Said city or town may either purchase a unit of a condominium or, if the city or town intends to become the owner of such a unit and use the same for municipal purposes, it may contract for the creation of a condominium and for the advancement to the city or town of the acquisition costs allocable to all other units therein. It may acquire land therefor or devote thereto land already owned by it, construct, reconstruct or remodel a building thereon subject however to the provisions of chapter one hundred and forty-nine notwithstanding that said building is not intended solely for municipal uses, and execute and record a master deed submitting such land and building to the provisions of this chapter. Upon the completion of the said construction, reconstruction or remodelling it may convey to such other parties to said contract such units as have been paid for in the proportion of the aggregate cost allocable to their stipulated units. The authority contained in this section shall be exercised, in the case of the city of Boston, by its public facilities commission, in the case of a city having a Plan E charter, by the affirmative vote of a majority of its city council, in the case of any other city, by its city council subject to the provisions of its city charter, and in the case of a town, by its town meeting.

Added by St.1972, c. 709, § 3.

§ 21. Multiple family condominium units; by-laws; master deed

If a condominium does not contain any unit which is designed for occupancy by only one family or household, or if the floor area of all those units which are designed for occupancy by only one family or household does not in the aggregate exceed ten per cent of the floor area of all units in the condominium, then the following provisions shall be applicable notwithstanding any other provisions of this chapter:

(*a*) The by-laws may provide:

(1) That to any extent specified in the by-laws the common profits shall be distributed among, and the common expenses shall be charged to, the unit owners in proportions other than according to their respective percentages of the undivided interest in the common areas and facilities.

(2) That to any extent specified in the by-laws the unit owners shall not be personally liable for sums assessed for their share of common expenses, but such provisions shall not adversely affect any lien for said share.

(3) For limitations upon the first mortgages of record or the types or categories thereof which shall have priority over the liens provided for in clause (*c*) of section six, which may be dependent on the person or entity to whom such mortgages are given or upon such other criteria as may be specified in the by-laws.

(4) A procedure for submitting the disputes arising from the administration of the condominium to arbitration or other impartial determination.

(5) Provisions giving a particular unit owner or owners voting rights with respect to election of directors, trustees or members of the managing board less than, or in excess of, the voting rights which such owner or owners would otherwise have had, and provisions requiring or permitting approval of any matter, or any specified category or categories of matters, by a proportion greater than a majority, which proportion may be as great as one hundred percent.

(6) Terms and conditions differing from those set forth in sections seventeen, eighteen and nineteen, or any of them, regarding rebuilding made necessary by fire or other casualty loss, the making of improvements and allocation of the costs of such rebuilding or improvements, and the removal of the condominium or portion thereof from the provisions of this chapter; and in such case such terms and conditions so provided in the by-laws shall take precedence over the provisions of sections seventeen, eighteen and nineteen to the extent inconsistent therewith.

(*b*) The master deed:

(1) Need not contain a statement of the number of rooms in any unit designed for purposes other than dwelling.

(2) May contain a requirement that in order for instruments to be binding on an organization of unit owners which is a trust or unincorporated association, such instruments shall be signed by a greater proportion of the trustees or of the managing board than a majority, which proportion may be as great as one hundred percent; and in such case the provisions of clause (*e*) of section ten shall apply only to instruments signed by the proportion of trustees or of the managing board set forth in such requirement in the master deed.

Added by St.1972, c. 709, § 3.

CHAPTER 184

GENERAL PROVISIONS RELATIVE TO REAL PROPERTY

Sec.
18. Entry into land; legal proceedings required to recover possession of land or tenements; jurisdiction.

§ 18. Entry into land; legal proceedings required to recover possession of land or tenements; jurisdiction

No person shall make an entry into land or tenements except in cases where his entry is allowed by law, and in such cases he shall not enter by force, but in a peaceable manner.

No person shall attempt to recover possession of land or tenements in any manner other than through an action brought pursuant to chapter two hundred and thirty-nine or such other proceedings authorized by law. The superior and district courts shall have jurisdiction in equity to enforce the provisions of this section.

Amended by St.1973, c. 778, § 1.

CHAPTER 185C

HOUSING COURT DEPARTMENT

Sec.
1. Composition; definitions.
2. Superior and general jurisdiction; presumption; processes.
3. Concurrent jurisdiction; powers of superior court department; enforcement authority.
4. Sittings of court.
5. Time for transaction of business.
6. Seal.
7. Rules and forms of procedure.
8. Justices; appointment; absence.
8A. Administrative head.
9. Clerks; appointment; term; residence.
9A. Salary of clerks; practice of law.
10. Temporary clerks.
11. Assistant clerks.
12. Oath of office of clerks.
13. Bond of clerks.
14. Powers and duties of clerks.
15. Court officers.
16. Housing specialists.
17. Practice of law by clerks or housing specialists.
18. Recording system; procurement of law books, stationery, etc.
19. Commencement of proceedings; fees; nonwillful offense deemed noncriminal.
20. Transfer of civil actions.
21. Trial without jury; exception; report of inspector as prima facie evidence.
22. Entry of judgment or order.
23. Bond of receiver.

§ 1. Composition; definitions

The housing court department established under section one of chapter two hundred and eleven B shall be composed of a division for Hampden county and a division for the city of Boston. Wherever the words "housing court" are used, or wherever in this chapter the word "court" is used in that context, they shall refer to a division of the housing court department; and the words "judge of the housing court" or the word "judge", in context, shall mean an associate justice of the trial court appointed to a division of the housing court department.

Added by St.1978, c. 478, § 92.

§ 2. Superior and general jurisdiction; presumption; processes

The divisions of the housing court department shall have superior and general jurisdiction with reference to all cases and matters within their jurisdiction; and no order, decree, judgment sentence, warrant, writ or process made, issued or pronounced by them need set out any adjudication or circumstances with greater particularity than would be required in other departments of superior and general jurisdiction, and the like presumption shall be made in favor of proceedings in the housing court department as would be made in favor of proceedings in other departments of superior and general jurisdiction. Writs, subpoenas, citations, orders, notices, executions and all other processes issued in the housing court department signed by the clerk, temporary clerk or an assistant clerk, and bear the teste of the first justice of the division and shall run throughout the commonwealth.

Added by St.1978, c. 478, § 92.

§ 3. Concurrent jurisdiction; powers of superior court department; enforcement authority

The divisions of the housing court department shall have common law and statutory jurisdiction concurrent with the divisions of the district court department and the superior court department of all crimes and of all civil actions arising in the city of Boston in the case of that division and arising in the county of Hampden in the case of that division, under chapter forty A, sections twenty-one through twenty-five of chapter two hundred and eighteen, sections fourteen and eighteen of chapter one hundred and eighty-six and under so much of sections one hundred and twenty-seven A through one hundred and twenty-seven F, inclusive, and sections one hundred and twenty-seven H through one hundred and twenty-seven L, inclusive, of chapter one hundred and eleven, so much of chapter ninety-three A, so much of section sixteen of chapter two hundred and seventy, so much of chapters one hundred and forty-three, one hundred and forty-eight, and two hundred and thirty-nine, jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods or services situated therein or furnished in connection therewith. The divisions of the housing court department shall also have jurisdiction of all housing problems, including all contract and tort actions which affect the health, safety and welfare of the occupants or owners thereof, arising within and affecting residents in the city of Boston, in the case of that division, and Hampden county, in the case of that division, and shall also have jurisdiction in equity, concurrent with the divisions of the district court department, the divisions of the probate and family court department, the superior court department, the appeals court, and the supreme judicial court, of all cases and matters so arising.

In all matters within their jurisdiction, the divisions of the housing court department shall have all the powers of the superior court department including the power to grant temporary restraining orders and preliminary injunctions as justice and equity may require. The divisions shall have like power and authority for enforcing orders, sentences and judgments made or pronounced in the exercise of any jurisdiction vested in them, and for punishing contempts of such orders, sentences and judgments and other contempts of their authority, as are vested for such or similar purposes in the supreme judicial court or superior court department.

Added by St.1978, c. 478, § 92. Amended by St.1979, c. 72, § 3.

§ 4. Sittings of court

The division of the housing court department for Hampden county shall hold its sittings in the court house facilities of the superior court department within said county and, with the consent of the chief administrative justice, such other court house facilities within said county as the administrative justice of the housing court department may deem to be expedient or convenient.

The division of the housing court department for the city of Boston shall hold its sittings in the Suffolk county court house and, with the consent of the chief administrative justice, such other court house facilities within the city of Boston as the administrative justice of the housing court department may deem to be expedient or convenient.

Added by St.1978, c. 478, § 92.

§ 5. Time for transaction of business

The divisions of the housing court department shall always be open and the business thereof, or of a justice thereof, may be transacted at any time; but such business shall not, except as provided in section six of chapter two hundred and twenty, be transacted on Saturday or Sunday or on a legal holiday unless it relates to an application which, in the opinion of the justice to whom it is made, is of pressing necessity; provided, that, if the convenience of the public so requires, the divisions shall be open for the transaction of business on such Saturdays, not legal holidays, and during such hours thereof, as the administrative justice may determine.

Added by St.1978, c. 478, § 92.

§ 6. Seal

Each division of the housing court department shall have a seal which will be in the custody of its clerk, and shall be affixed to all processes issued by a division of the housing court department requiring a seal.

Added by St.1978, c. 478, § 92.

§ 7. Rules and forms of procedure

The administrative justice of the housing court department shall from time to time make general rules and forms of procedure, which, before taking effect, shall be approved by the supreme judicial court or a justice thereof.

Added by St.1978, c. 478, § 92.

§ 8. Justices; appointment; absence

There shall be one justice appointed for the Hampden county division and two justices appointed for the city of Boston division of the housing court department. The senior justice in time of service shall be the first justice of the division. The first justice shall be the administrative head of his division. If the first justice is absent and delay would injure the public interest, the justice next in seniority shall act in his place, and if no justice of the division is available, the administrative justice of the department shall act.

Added by St.1978, c. 478, § 92.

§ 8A. Administrative head

The justice as provided under section one of chapter two hundred and eleven B as the administrative justice for the housing court department, in addition to his judicial powers and duties, shall, subject to the superintendence authority of the supreme judicial court and the administrative authority of the chief administrative justice of the trial court, be the administrative head of the housing court department.

Added by St.1978, c. 478, § 92.

§ 9. Clerks; appointment; term; residence

There shall be a clerk appointed, by the governor with the advice and consent of the council, for each division of the housing court department. Said clerks shall hold office during good behavior, subject, however, to retirement under the provisions of any general or special law relative to retirement systems. The clerk appointed for the Hampden county division shall reside in Hampden county.

Added by St.1978, c. 478, § 92.

§ 9A. Salary of clerks; practice of law

The clerks appointed under the provisions of section nine shall receive from the commonwealth as a salary a sum equivalent to the salary of the clerk of courts of the superior court department in their respective counties. Assistant clerks appointed under the provisions of section eleven shall receive from the commonwealth as a salary, in the instance of the first assistant clerk, a sum equivalent to eighty-seven and one half per cent of the salary of the clerk and for all other assistant clerks, a sum equivalent to seventy-five per cent of the salary of the clerk.

Said clerks and assistant clerks shall devote their entire time during business hours to their respective duties and shall not, directly or indirectly, engage in the practice of law.

Added by St.1978, c. 478, § 92.

§ 10. Temporary clerks

In case of the absence, death or removal of a clerk, the administrative justice may appoint a temporary clerk, to act until the clerk resumes his duties or until the vacancy is filled.

Added by St.1978, c. 478, § 92.

§ 11. Assistant clerks

The clerk of a division of the housing court department may, subject to the approval of the first justice, appoint one or more assistant clerks, who shall be removable at his pleasure or at the pleasure of the administrative justice. The clerk shall be responsible for all official acts of the assistant clerks and all powers conferred by statute upon the clerk, unless otherwise stated, and in any event subject to limitation by the clerk or the administrative justice, may be exercised by an assistant clerk.

Added by St.1978, c. 478, § 92.

§ 12. Oath of office of clerks

The clerk, any temporary clerk and all assistant clerks shall be sworn; and in the case of any temporary clerk and of every assistant clerk, the oath of office shall be administered by the administrative justice who shall, upon administering the same, forthwith make return of such act with the date thereof to the state secretary.

Added by St.1978, c. 478, § 92.

§ 13. Bond of clerks

The clerk, any temporary clerk and every assistant clerk, before entering upon performance of his official duties, and thereafter, at intervals of not more than one year, so long as he continues to hold such office shall give to the commonwealth a bond, conditioned to perform faithfully his official duties, with a surety company, authorized to transact business in the commonwealth as surety, in a sum approved by the administrative justice, but in no event less than five thousand dollars. Failure to give such bond shall be sufficient cause for his removal.

Added by St.1978, c. 478, § 92.

§ 14. Powers and duties of clerks

The clerk, temporary clerk and assistant clerks or one of them for each division shall attend all sessions of the housing court department and shall keep a record of all its proceedings. The clerk of each division shall have the care and custody of all the records, books and papers appertaining to, or filed or deposited in, his office. The clerk of each division shall make and issue writs and processes, shall make returns of the housing court department tax bills of costs and receive fines, forfeitures, fees and costs accruing from the civil and criminal business of the housing court department including fees for blanks and copies. The clerk of each division shall have such other powers and duties as the administrative justice may from time to time order.

The clerk and assistant clerks of each division of the housing court department may sign process issued by the housing court department, and housing court department records, documents or other legal papers or copies thereof made or issued by such clerk or an assistant clerk in conformity with law, except search warrants and process authorizing arrests or commitments, by imprinting thereon a facsimile of the signature of the clerk or assistant clerk; and such facsimile signatures shall have the same validity as their written signatures.

Added by St.1978, c. 478, § 92.

§ 15. Court officers

The first justice of a division may appoint such number of court officers for his division as the administrative justice of the housing court department may from time to time determine. Any such court officer may be removed for any cause considered by the first justice of the division to be sufficient. Any vacancy caused by removal or otherwise may be filled by the first justice of the division. The court officers shall attend the sessions in the divisions of the housing court department, shall preserve order and may serve warrants, mittimuses, precepts, orders and processes of a division of the housing court department. Each court officer shall give bond for the faithful performance of his duties in the sum of one thousand dollars payable to the commonwealth, with sufficient sureties approved by the administrative justice. Each court officer, while on duty in the housing court department, shall wear a uniform approved by the administrative justice which shall be furnished at the expense of the commonwealth.

Added by St.1978, c. 478, § 92.

§ 16. Housing specialists

The first justice of a division may appoint such number of housing specialists as the administrative justice may from time to time determine. The first justice of a division may designate one of them as chief housing specialist for the division. All housing specialists shall hold office at the pleasure of the first justice of the division, subject, however, to retirement under the provisions of any applicable general or special law relative to retirement systems. All housing specialists shall be knowledgeable in the maintenance, repair, and rehabilitation of dwelling units; the problems of landlord and tenant as they pertain to dwelling units; the types of funds and services available to assist landlords and tenants in the financing and resolution of such problems; the federal and state laws, rules and regulations pertaining to the maintenance, repair and rehabilitation of such units; and the financing and resolution of such problems. The housing specialists shall have such powers and perform such duties as the first justice of the division shall from time to time prescribe. Every housing specialist shall be sworn by the first justice of the division, who shall, upon administering the oath, forthwith make return of such act with the date thereof to the state secretary.

Added by St.1978, c. 478, § 92.

§ 17. Practice of law by clerks or housing specialists

No clerk, temporary clerk, assistant clerk or housing specialist shall be retained or employed as an attorney in any complaint, action or suit in any court of the commonwealth.

Added by St.1978, c. 478, § 92.

§ 18. Recording system; procurement of law books, stationery, etc.

At the trial of any issue of fact, the justice presiding at the trial shall provide for a proper recording system which shall record the proceedings. The cost of said recording system shall be paid by the commonwealth upon the certificate of the administrative justice. Each clerk of the housing court department may procure law books and blank books, blanks, stationery and other incidentals required by divisions of the housing court department as the administrative justice may approve.

Added by St.1978, c. 478, § 92.

§ 19. Commencement of proceedings; fees; nonwillful offense deemed noncriminal

Proceedings shall be commenced in the housing court department as follows: a criminal case by complaint in like manner as in the district court department, a civil action in accordance with the Massachusetts Rules of Civil Procedure; provided, however, that a summary process action and a small claims action shall be commenced and administered in accordance with rules promulgated by the administrative justice of the housing court department, subject to the approval of the supreme judicial court. Clerks of the housing court department shall charge a fee of five dollars for the entry of an action, which shall be paid by the party entering the same; and no other fee shall be charged for taxing costs, for issuing any subpoena or execution or for issuing any order of notice or other mesne, interlocutory or final order, rule, decree or process authorized by law, except a temporary restraining order or preliminary injunction for the issuance of which the clerk shall charge five dollars; provided, however, that no fee for the entry of an action or for the issuance of a temporary restraining order or preliminary injunction shall be charged the commonwealth or political subdivision thereof. If the party entering the action or obtaining the restraining order or preliminary injunction is found to be destitute and unable to pay, the presiding justice may order the payment of the fee or fees prescribed by this paragraph to be waived.

Notwithstanding that a proceeding under this chapter is commenced by complaint, if it is found that the offense charged was not willful, intentional, reckless or repeated, the proceeding shall not be deemed criminal and no record of the case shall be entered in the probation records.

Added by St.1978, c. 478, § 92.

§ 20. Transfer of civil actions

Any civil action within the jurisdiction of the housing court department which is pending in another court department may be transferred to the housing court department by any party thereto; but no civil action originally entered in the housing court department shall be transferred to any other department, except that the supreme judicial court may direct any cause pending in the housing court department to be transferred to it in whole or in part for further action or directions, and in cases of partial transfer may issue such orders or directions in regard to the part of such cause not so transferred as justice may require.

Whenever cross actions between the same parties or two or more actions, including for the purposes hereof other department proceedings, arising out of or connected with the same housing accommodation are pending, one or more in the housing court department, the district court department, the probate and family court department, or in the superior court department, the administrative justice or the presiding justice upon motion of any party to any of such actions, may order that the action or actions pending in the district court department and in the probate and family court department and in the superior court department with all the papers relating thereto, be transferred to the housing court department; and such action or actions shall thereafter proceed in the housing court department as though originally entered there.

Added by St.1978, c. 478, § 92.

§ 21. Trial without jury; exception; report of inspector as prima facie evidence

All cases in the housing court department, including motions and the like, whether interlocutory or final, shall be heard and determined by a justice of a division of the housing court department sitting without jury, except that in all cases where a jury trial is required by the constitution of the commonwealth or of the United States and the defendant has not waived his rights to a trial by jury, the cause shall be forthwith tried in a division of the housing court department before a jury selected in accordance with chapter two hundred and thirty-four. In the trial of any complaint or action in the housing court department, the report of any inspector serving in the housing inspection department of a city or the board of health of any city or town shall be prima facie evidence of the facts stated therein.

Added by St.1978, c. 478, § 92.

§ 22. Entry of judgment or order

Every judgment or order entered by a division of the housing court department shall bear as its date the day when actually entered by the clerk, and at the time of the entry he shall note such date upon the judgment or order and upon the docket.

Added by St.1978, c. 478, § 92.

§ 23. Bond of receiver

The bond of any receiver appointed by a division of the housing court department shall be payable to the commonwealth and shall otherwise be in such form as the administrative justice of the housing court department shall require. Such bond may be enforced in the name of the commonwealth by the treasurer of the commonwealth, or by any person interested therein and authorized by the administrative justice of the housing court department, after notice to said treasurer, to take such action. The housing court department shall have exclusive original jurisdiction of actions on such bonds. Any sums recovered shall be paid over or administered as a justice of the housing court department directs.

Added by St.1978, c. 478, § 92.

CHAPTER 186

ESTATES FOR YEARS AND AT WILL

Sec.

12. Notice to determine estate at will.
14. Wrongful acts of lessor or landlord of buildings or premises occupied for dwelling or residential purposes; criminal penalties; civil remedies; jurisdiction; sections applicable to acts of reprisal, waiver in leases or rental agreements prohibited.
15. Provisions of lease or rental agreement pertaining to nonliability of landlord.
18. Reprisal for reporting violations of law or for tenant's union activity; damages and costs; notice of termination; presumption; waiver in leases or other rental agreements prohibited.
19. Notice to landlord of unsafe condition; tort actions for injuries resulting from uncorrected condition.
21. Disclosure of insurance information by lessor; violations; waiver.

§ 12. Notice to determine estate at will

Estates at will may be determined by either party by three months' notice in writing for that purpose given to the other party; and, if the rent reserved is payable at periods of less than three months, the time of such notice shall be sufficient if it is equal to the interval between the days of payment or thirty days, whichever is longer. Such written notice may include an offer to establish a new tenancy for the same premises on terms different from that of the tenancy being terminated and the validity of such written notice shall not be affected by the inclusion of such offer. In case of neglect or refusal to pay the rent due from a tenant at will, fourteen days' notice to quit, given in writing by the landlord to the tenant, shall be sufficient to determine the tenancy; provided, that the tenancy of a tenant who has not received a similar notice from the landlord within the twelve months next preceding the receipt of such notice shall not be determined if the tenant, within ten days after the receipt thereof, pays or tenders to the landlord, the landlord's attorney, or the person to whom the tenant customarily pays rent, the full amount of any rent due. Every notice to determine an estate at will for nonpayment of rent shall contain the following notification to the tenant: "If you have not received a notice to quit for nonpayment of rent within the last twelve months, you have a right to prevent termination of your tenancy by paying or tendering to your landlord, your landlord's attorney or the person to whom you customarily pay your rent the full amount of rent due within ten days after your receipt of this notice." If any notice to determine an estate at will nonpayment of rent shall fail to contain such notification, the time within which the tenant receiving the notice would be entitled to pay or tender rent pursuant to this section shall be extended to the day the answer is due in any action by the landlord to recover possession of the premises. Failure to include such notice shall not otherwise affect the validity of the said notice. If the neglect or refusal to pay the rent due was caused by a failure or delay of the federal government, the commonwealth or any municipality, or any departments, agencies or authorities thereof, in the mailing or delivery of any subsistence or rental payment, check or voucher other than a salary payment to either the tenant or the landlord, the court in any action for possession shall continue the hearing not less than seven days in order to furnish notice of such action to the appropriate agency and shall, if all rent due with interest and costs of suit has been tendered to the landlord within such time, treat the tenancy as not having been terminated.

Amended by St.1946, c. 202; St.1973, c. 256, § 1; St.1974, c. 320, § 2; St. 1977, c. 494, § 2; St.1979, c. 251.

§ 14. Wrongful acts of lessor or landlord of buildings or premises occupied for dwelling or residential purposes; criminal penalties; civil remedies; jurisdiction; sections applicable to acts of reprisal, waiver in leases or rental agreements prohibited

Any lessor or landlord of any building or part thereof occupied for dwelling purposes, other than a room or rooms in a hotel, but including a mobile home or land therefor, who is required by law or by the express or implied terms of any contract or lease or tenancy at will to furnish water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service to any occupant of such building or part thereof, who willfully or intentionally fails to furnish such water, hot water, heat, light, power, gas, elevator service, telephone service, janitor service or refrigeration service at any time when the same is necessary to the proper or customary use of such building or part thereof, or any lessor or landlord who directly or indirectly interferes with the furnishing by another of such utilities or services, or who transfers the responsibility for payment for any utility services to the occupant without his knowledge or consent, or any lessor or landlord who directly or indirectly interferes with the quiet enjoyment of any residential premises by the occupant, or who attempts to regain possession of such premises by force without benefit of judicial process, shall be punished by a fine of not less than twenty-five dollars nor more than three hundred dollars, or by imprisonment for not more than six months. Any person who commits any act in violation of this section shall also be liable for actual and consequential damages or three month's rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee, all of which may be applied in setoff to or in recoupment against any claim for rent owed or owing. The superior and district courts shall have jurisdiction in equity to restrain violations of this section. The provisions of section eighteen of chapter one hundred and eighty-six and section two A of chapter two hundred and thirty-nine shall apply to any act taken as a reprisal against any person for reporting or proceeding against violations of this section. Any waiver of this provision in any lease or other rental agreement, except with respect to any restriction on the provision of a service specified in this section imposed by the United States or any agency thereof or the commonwealth or any agency or political subdivision thereof and not resulting from the acts or omissions of the landlord or lessor, and except for interruptions of any specified service during the time required to perform necessary repairs to apparatus necessary for the delivery of said service or interruptions resulting from natural causes beyond the control of the lessor or landlord, shall be void and unenforceable.

Amended by St.1950, c. 495; St.1957, c. 114; St.1973, c. 778, § 2; St.1974, c. 192, § 1.

§ 15. Provisions of lease or rental agreement pertaining to nonliability of landlord

Any provision of a lease or other rental agreement relating to real property whereby a lessee or tenant enters into a covenant, agreement or contract, by the use of any words whatsoever, the effect of which is to indemnify the lessor or landlord or hold the lessor or landlord harmless, or preclude or exonerate the lessor or landlord from any or all liability to the lessee or tenant, or to any other person, for any injury, loss, damage or liability arising from any omission, fault, negligence or other misconduct of the lessor or landlord on or about the leased or rented premises or on or about any elevators, stairways, hallways or other appurtenance used in connection therewith, shall be deemed to be against public policy and void.

Added by St.1945, c. 445, § 1. Amended by St.1974, c. 575, § 1.

§ 18. Reprisal for reporting violations of law or for tenant's union activity; damages and costs; notice of termination, presumption; waiver in leases or other rental agreements prohibited

Any person or agent thereof who threatens to or takes reprisals against any tenant of residential premises for the tenant's act of, commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action is to obtain damages under, or otherwise enforce, any federal, state or local law, regulation, by-law or ordinance, which has as its objective the regulation of residential premises; or exercising the tenant's rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four; or reporting to the board of health or, in the city of Boston to the commissioner of housing inspection or to any other board having as its objective the regulation of residential premises a violation or a suspected violation of any health or building code or of any other municipal by-law or ordinance, or state or federal law or regulation which has as its objective the regulation of residential premises; or reporting or complaining of such violation or suspected violation in writing to the landlord or to the agent of the landlord; or for organizing or joining a tenants' union or similar organization shall be liable for damages which shall not be less than one month's rent or more than three month's rent, or the actual damages sustained by the tenant, whichever is greater, and the costs of the suit, including a reasonable attorney's fee.

The receipt of any notice of termination of tenancy, except for nonpayment of rent, or, of increase in rent, or, of any substantial alteration in the terms of tenancy within six months after the tenant has commenced, proceeded with, or obtained relief in such action, exercised such rights, made such report or complaint, or organized or joined such tenants' union or within six months after any other person has taken such action or actions on behalf of the tenant or in, or relating to, the building in which the tenant resides, shall create a rebuttable presumption that such notice or other action is a reprisal against the tenant for engaging in such activities. Such presumption shall be rebutted only by clear and convincing evidence that such person's action was not a reprisal against the tenant and that such person had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, regardless of tenants engaging in, or the belief that tenants had engaged in, activities protected under this section.

Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable.

Added by St.1969, c. 701, § 1. Amended by St.1972, c. 99, § 1; St.1973, c. 858, § 3; St.1974, c. 192, § 4; St.1978, c. 149, § 1.

§ 19. Notice to landlord of unsafe condition; tort actions for injuries resulting from uncorrected condition

A landlord or lessor of any real estate except an owner-occupied two- or three-family dwelling shall, within a reasonable time following receipt of a written notice from a tenant forwarded by registered or certified mail of an unsafe condition, not caused by the tenant, his invitee, or any one occupying through or under the tenant, exercise reasonable care to correct the unsafe condition described in said notice except that such notice need not be given for unsafe conditions in that portion of the premises not under control of the tenant. The tenant or any person rightfully on said premises injured as a result of the failure to correct said unsafe condition within a reasonable time shall have a right of action in tort against the landlord or lessor for damages. Any waiver of this provision in any lease or other rental agreement shall be void and unenforceable. The notice requirement of this section shall be satisfied by a notice from a board of health or other code enforcement agency to a landlord or lessor of residential premises not exempted by the provisions of this section of a violation of the state sanitary code or other applicable by-laws, ordinances, rules or regulations.

Added by St.1972, c. 665.

§ 21. Disclosure of insurance information by lessor; violations; waiver

The landlord or lessor of any residential property except owner-occupied dwellings of four units or fewer, shall, upon the written request of any tenant or lawful occupant or of any code or other law enforcement official disclose in writing the name of the company or companies insuring the property against loss or damage by fire and the amount of insurance provided by each company. Whoever violates this section shall be punished by a fine of not more than one thousand dollars. A waiver of this section in any lease or other rental agreement shall be void and unenforceable.

Added by St.1978, c. 446, § 7.

TITLE II

DESCENT AND DISTRIBUTION, WILLS, ESTATES OF DECEASED PERSONS AND ABSENTEES, GUARDIANSHIP, CONSERVATORSHIP AND TRUSTS

CHAPTER 201

GUARDIANS AND CONSERVATORS

GUARDIANS OF INSANE PERSONS AND SPENDTHRIFTS
Sec.
6. Mentally ill persons; appointment of guardian.

GUARDIANS OF INSANE PERSONS AND SPENDTHRIFTS

§ 6. Mentally ill persons; appointment of guardian

A parent of a mentally ill person, two or more relatives or friends of a mentally ill person, a nonprofit corporation organized under the laws of the commonwealth whose corporate charter authorizes the corporation to act as a guardian of a mentally ill person, or the department of mental health, may file a petition in the probate court asking to have a guardian appointed for such mentally ill person; and if after notice as provided in section seven and a hearing the court finds that he is incapable of taking care of himself by reason of mental illness, it shall appoint a guardian of his person and estate. A copy of such appointment shall be sent by mail by the register to the said department. The court may require additional medical testimony as to the mental condition of the person alleged to be mentally ill and may require him to submit to examination. It may also appoint one or more physicians, expert in mental illness, to examine such person and report their conclusions to the court. Reasonable expense incurred in such examination shall be paid out of the estate of such person or by the commonwealth as may be determined by the court. No guardian so appointed shall have the authority to cause to admit or commit such person to a mental health or retardation facility unless the court specifically finds the same to be in the best interests of such person and specifically so authorizes such admission or commitment by its order or decree. The court shall not authorize such admission or commitment except after a hearing for the purposes of which counsel shall be provided for any indigent, allegedly mentally ill person. The court shall require the attendance of the allegedly mentally ill person at such hearing unless the court finds that there exists extraordinary circumstances requiring his absence, in which event the attendance of his counsel shall suffice.

Amended by St.1941, c. 194, § 13; St.1956, c. 314, § 2; St.1974, c. 845, § 3; St.1977, c. 567, § 1; St.1978, c. 478, § 94.

TITLE III

DOMESTIC RELATIONS

CHAPTER 207

MARRIAGE

NOTICE OF INTENTION OF MARRIAGE

Sec.
20A. Pregnancy; certificate of physician.
28. Certificate of intention of marriage; delivery; time.
28A. Certificate of intention of marriage; issuance; conditions precedent.
29. Certificate of intention of marriage; issuance to immigrants.
30. Certificate of intention of marriage; dispensing with five days' notice.

NOTICE OF INTENTION OF MARRIAGE

§ 20A. Pregnancy; certificate of physician

Each clerk or registrar with whom a notice of intention of marriage is filed shall at the same time receive, if it is presented by the party or person filing such notice as provided in sections nineteen and twenty, a certificate signed by a registered physician that the female intending such marriage is pregnant. In any case where such a certificate has been received, the clerk or registrar, when issuing a certificate under section twenty-eight, shall note thereon the following:—Certificate received under the provisions of section twenty A of chapter two hundred and seven of the General Laws.

§ 28. Certificate of intention of marriage; delivery; time

On or after the third day from the filing of notice of intention of marriage, except as otherwise provided, but not in any event later than sixty days after such filing, the clerk or registrar shall deliver to the parties a certificate signed by him, specifying the date when notice was filed with him and all facts relative to the marriage which are required by law to be ascertained and recorded, except those relative to the person by whom the marriage is to be solemnized. Such certificate shall be delivered to the minister or magistrate before whom the marriage is to be contracted, before he proceeds to solemnize the same. If such certificate is not sooner used, it shall be returned to the office issuing it within sixty days after the date when notice of intention of marriage was filed.

Amended by St.1941, c. 601, § 2; St.1959, c. 118, § 2.

§ 28A. Certificate of intention of marriage; issuance; conditions precedent

Except as hereinafter provided, a certificate shall not be issued by the clerk or registrar under section twenty-eight until he has received from each party to the intended marriage a medical certificate signed by a qualified physician registered and practicing in the commonwealth, a physician registered or licensed to practice in any other state or territory of the United States, or the District of Columbia, or a commissioned medical officer on active service in the armed forces or the public health service of the United States, or a qualified physician registered and practicing in Canada, who has examined such party as hereinafter provided. Such examination shall be made only to ascertain the presence or absence of evidence of syphilis, and shall include a recognized serological test for syphilis. Said test shall be made by a laboratory of the department of public health, or by a laboratory meeting standards approved by said department or, if not located within the commonwealth, acceptable to said department. The examination by such physician and the laboratory test shall have been made not more than thirty days prior to the date of filing the notice of intention of marriage or, if made after the date of filing such notice, not more than sixty days prior to issuing a certificate under section twenty-eight.

Prior to issuing a certificate to a female under section twenty-eight, the clerk or registrar shall also require from the physician signing the medical certificate required under the first paragraph certification that such female has (*i*) been tested and found immune to rubella infection or (*ii*) if tested and not found immune to rubella infection, been advised of the risks of contracting rubella during childbearing years and of the availability of an immunizing vaccine and of the risks involved in such immunization if there is a possibility of pregnancy at the time of or within four months of receiving the vaccine and has been advised of the advisability of receiving a pregnancy test, or (*iii*) if not tested, been offered a test to determine immunity to rubella infection and has been advised of the risks of contracting rubella during childbearing years and of the immunizing vaccine available to eliminate or protect against such risks. Any such tests performed shall include a recognized serological test made by a laboratory meeting the requirements specified in the first paragraph and may be done in conjunction with the serological test for syphilis. The requirements of this paragraph shall not apply, if there is certification by a physician that the female is past the childbearing age or incapable of conception.

If such physician, in making such examination, discovers evidence of syphilis, he shall inform both parties to the intended marriage of the nature of such disease and of the possibilities of transmitting such infection to his or her marital partner or to their children. The physician shall also certify on forms provided by said department that the applicant therein named has been given an examination, including a serological test for syphilis, on a day specified in the statement, and that, in the opinion of the physician, the person therein named is not infected with syphilis, or, if so infected, is not in a stage which is communicable, but if such infection is communicable, no such certificate shall be issued.

Blank forms of medical certificates required under this section shall be furnished to city and town clerks and others by said department of public health, and all entries shall be made on said forms, except as hereinafter provided.

Medical certificates issued by the department of health of any other state or territory in the United States, the District of Columbia, and Canada shall be deemed acceptable, provided they are signed by a qualified physician licensed and practicing in the areas mentioned, and certifying that, on the basis of a physical examination and a serological test performed at a laboratory acceptable to the department of public health of this commonwealth, the person therein named does not have syphilis, or, if so infected, is not in a stage which is communicable. The name of the laboratory performing the test shall appear upon the medical certificate.

The clerk or registrar receiving such medical certificates in the case of an intended marriage shall endorse on the certificate to be issued by him under section twenty-eight in relation to the marriage a statement that such medical certificates have been received.

In emergency cases where the death of either party to the intended marriage is imminent, or where the female is near the termination of her pregnancy, upon the authoritative request of a minister, clergyman, priest, rabbi or attending physician, the clerk or registrar may issue a certificate under section twenty-eight without having received the medical certificate, or having endorsed on his certificate a statement of such receipt, as provided by this section.

Whoever, being subject to the laws of the commonwealth, fails to comply with any provision of this section shall be punished by a fine of not less than ten nor more than one hundred dollars.

Added by St.1943, c. 561, § 1. Amended by St.1950, c. 113; St.1970, c. 152; St.1974, c. 134.

§ 29. Certificate of intention of marriage; issuance to immigrants

If either of the parties to an intended marriage has arrived as an immigrant from a foreign country within five days, the notice of intention may be filed at any time before the marriage, and the certificate required by the preceding section shall be issued at any time after the filing of such intention.

§ 30. Certificate of intention of marriage; dispensing with five days' notice

Upon application by both of the parties to an intended marriage, when both parties are residents of the commonwealth or both parties are non-residents, or upon application of the party residing within the commonwealth when one of the parties is a resident and the other a non-resident, a judge of probate or a justice of a district court, or a special judge of probate and insolvency or special justice of a district court, may, after hearing such evidence as is presented, grant a certificate stating that in his opinion it is expedient that the intended marriage be solemnized without delay. Upon presentation of such a certificate, or, in extraordinary or emergency cases when the death of either party is imminent, upon the authoritative request of a minister, clergyman, priest, rabbi, authorized representative of a Spiritual Assembly of the Baha'is or attending physician, the clerk or registrar of the town where the notice of intention has been filed shall at once issue the certificate prescribed in section twenty-eight.

Amended by St.1937, c. 11, § 1; St.1945, c. 214, § 1; St.1946, c. 197, § 1; St.1968, c. 81, § 1.

PART III

COURTS, JUDICIAL OFFICERS AND PROCEEDINGS IN CIVIL CASES

TITLE I

COURTS AND JUDICIAL OFFICERS

CHAPTER 214

EQUITY JURISDICTION

Sec.
3B. Fair information practices of public holders; violations of chapter 66A; remedies; limitation.
7A. Damage to the environment; temporary restraining order as additional remedy; definitions; requisites; procedure.

§ 3B. Fair information practices of public holders; violations of chapter 66A; remedies; limitation

Any holder, as that term is defined in chapter sixty-six A, which violates any provision of said chapter sixty-six A, shall be liable to any individual who suffers any damage as a result of such violations, and the individual damaged may bring an action against such holder to recover any damages sustained. Notwithstanding any liability for actual damages as may be shown, such holder shall be liable for exemplary damages of not less than one hundred dollars for each violation together with such costs and reasonable attorney's fees as may be incurred in said action.

Any holder which violates or proposes to violate any of the provisions of chapter sixty-six A shall be subject to an action for injunction, declaratory judgment, or mandamus issued by any court of competent jurisdiction. The court may make such order or judgment as may be necessary to prevent any holder from employing practices which violate chapter sixty-six A. Actions for injunction or mandamus under this section may be prosecuted by an individual or by the attorney general in the name of the commonwealth upon his own complaint or upon the complaint of any individual.

An action to enforce any liability created under chapter sixty-six A, may be brought in any court of competent jurisdiction within three years from the date in which the liability arises; provided, however, that where a defendant had materially or willfully misused any personal data required to be disclosed to a data subject according to the provisions of chapter sixty-six A, and said personal data so misused is material to the establishment of the defendant's liability to the data subject, the action may be brought at any time within three years after such misuse is discovered.

Added by St.1975, c. 776, § 3. Amended by St.1977, c. 691, § 14.

§ 7A. Damage to the environment; temporary restraining order as additional remedy; definitions; requisites; procedure

As used in this section, "damage to the environment" shall mean any destruction, damage or impairment, actual or probable, to any of the natural resources of the commonwealth, whether caused by the defendant alone or by the defendant and others acting jointly or severally. Damage to the environment shall include, but not be limited to, air pollution, water pollution, improper sewage disposal, pesticide pollution, excessive noise, improper operation of dumping grounds, impairment and eutrophication of rivers, streams, flood plains, lakes, ponds or other water resources, destruction of seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites. Damage to the environment shall not include any insignificant destruction, damage or impairment to such natural resources.

As used in this section "person" shall mean any individual, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or any political subdivision thereof, any administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representatives, agents or assigns.

The superior court for the county in which damage to the environment is occurring or is about to occur may, upon a civil action in which equitable or declaratory relief is sought in which not less than ten persons domiciled within the commonwealth are joined as plaintiffs, or upon such an action by any political subdivision of the commonwealth, determine whether such damage is occurring or is about to occur and may, before the final determination of the action, restrain the person causing or about to cause such damage; provided, however, that the damage caused or about to be caused by such person constitutes a violation of a statute, ordinance, by-law or regulation the major purpose of which is to prevent or minimize damage to the environment.

No such action shall be taken unless the plaintiffs at least twenty-one days prior to the commencement of such action direct a written notice of such violation or imminent violation by certified mail, to the agency responsible for enforcing said statute, ordinance, by-law or regulation, to the attorney general, and to the person violating or about to violate the same; provided, however, that if the plaintiffs can show that irreparable damage will result unless immediate action is taken the court may waive the foregoing requirement of notice and issue a temporary restraining order forthwith.

It shall be a defense to any action taken pursuant to this section that the defendant is subject to, and in compliance in good faith with, a judicially enforceable administrative pollution abatement schedule or implementation plan the purpose of which is alleviation of damage to the environment complained of, unless the plaintiffs demonstrate that a danger to the public health and safety justifies the court in retaining jurisdiction.

Any action brought pursuant to the authorization contained in this section shall be advanced for speedy trial and shall not be compromised without prior approval of the court.

If there is a finding by the court in favor of the plaintiffs it may assess their costs, including reasonable fees of expert witnesses but not attorney's fees; provided, however, that no such finding shall include damages.

The court may require the plaintiffs to post a surety or cash bond in a sum not to exceed five hundred dollars to secure the payment of any costs which may be assessed against the plaintiffs in the event they do not prevail.

Nothing contained in this section shall be construed so as to impair, derogate or diminish any common law or statutory right or remedy which may be available to any person, but the cause of action herein authorized shall be in addition to any such right or remedy.

Added by St.1973, c. 1114, § 62.

CHAPTER 215

PROBATE COURTS

COURTS AND THEIR JURISDICTION

Sec.
3. General provisions.

COURTS AND THEIR JURISDICTION

§ 3. General provisions

Probate courts shall have jurisdiction of probate of wills, of granting administration on the estates of persons who at the time of their decease were inhabitants of or residents in their respective counties and of persons who die out of the commonwealth leaving estate to be administered within their respective counties; of the appointment of guardians and conservators; of all matters relative to the estates of such deceased persons and wards; of petitions for the adoption of children, and for change of names; of actions for divorce or for affirming or annulling marriage brought in the probate court; of proceedings transferred to it under the provisions of section four A of chapter two hundred and eleven; and of such other matters as have been or may be placed within their jurisdiction. Whenever service of any notice, summons, citation, order or other process in any of the foregoing proceedings is ordered to be made by publication the names of the estates or parties to such proceedings shall be printed in bold type.

Amended by St.1949, c. 56; St.1962, c. 567, § 2; St.1962, c. 722, § 6; St. 1975, c. 400, § 53.

CHAPTER 218

DISTRICT COURTS

CIVIL JURISDICTION

Sec.

19C. District court jurisdiction; equity powers and rules.

CRIMINAL JURISDICTION

26. General provisions.

SPECIAL PROVISIONS RELATIVE TO THE BOSTON JUVENILE COURT, THE WORCESTER JUVENILE COURT, THE BRISTOL COUNTY JUVENILE COURT AND THE SPRINGFIELD JUVENILE COURT

57. Divisions; territorial jurisdiction; appeals.

CIVIL JURISDICTION

§ 19C. District court jurisdiction; equity powers and rules

The district courts shall have original jurisdiction in rem and personam of all actions arising under sections one hundred and twenty-seven A to one hundred and twenty-seven K, inclusive, of chapter one hundred and eleven. The district courts shall have equity powers only to the extent necessary to enforce the aforementioned sections, including the power to appoint receivers, grant injunctions and issue restraining orders as justice and equity may require and for punishing civil contempts of orders, rulings and decrees made or pronounced in the exercise of this jurisdiction.

Subject to the approval of the supreme judicial court, the administrative justice for the district court department may from time to time promulgate rules and prescribe forms for the efficient operation of such equity sessions in the divisions of the district court department; and in the Boston municipal court department the administrative justice for said department may promulgate such rules and prescribe such forms.

Added by St.1970, c. 582. Amended by St.1978, c. 478, § 184.

CRIMINAL JURISDICTION

§ 26. General provisions

The district courts and the municipal court of the city of Boston shall have original jurisdiction, concurrent with the superior court, of the following offenses, complaint of which shall be brought in the division of the district court department, or in the Boston municipal court department, as the case may be, within whose judicial district the offense was allegedly committed or is otherwise made punishable: all violations of by-laws, orders, ordinances, rules and regulations, made by cities, towns and public officers, all misdemeanors, except libels, all felonies punishable by imprisonment in the state prison for not more than five years, the crimes mentioned in sections sixteen, seventeen, eighteen, nineteen, twenty-eight and forty-nine of chapter two hundred and sixty-six, and the crimes of escape or attempt to escape from any penal institution, forgery of a promissory note, or of an order for money or other property, and of uttering as true such a forged note or order, knowing the same to be forged. They shall have jurisdiction of proceedings referred to them under the provisions of section four A of chapter two hundred and eleven.

Amended by St.1937, c. 301, § 1; St.1938, c. 365, § 1; St.1958, c. 138; St.1962, c. 722, § 8; St.1964, c. 140; St.1969, c. 496; St.1973, c. 585; St.1976, c. 235; St.1978, c. 478, § 187.

SPECIAL PROVISIONS RELATIVE TO THE BOSTON JUVENILE COURT, THE WORCESTER JUVENILE COURT, THE BRISTOL COUNTY JUVENILE COURT AND THE SPRINGFIELD JUVENILE COURT

§ 57. Divisions; territorial jurisdiction; appeals

The juvenile court department established under section one of chapter two hundred and eleven B shall be composed of divisions, one for each of the judicial districts hereinafter enumerated, which shall continue to have and exercise jurisdiction over the following cities, towns, wards and territory, respectively:

Boston; within the same territorial limits as are prescribed for the criminal jurisdiction of the Boston municipal court department, and also within the territorial limits of wards four, five, and ten, except precincts one, six and seven of said ward ten, and precincts one and two of ward twenty-one; of Boston, all as existing on February first, nineteen hundred and seventy-six; and also as provided in sections twenty-four and thirty-nine E of chapter one hundred and nineteen relating to children within Suffolk county.

Worcester; within the same territorial limits as are prescribed for the criminal jurisdiction for the central district of Worcester.

Springfield; within the same territorial limits as are prescribed for the criminal jurisdiction of the district court of Springfield.

Bristol county; within the same territorial limits as are prescribed for the criminal jurisdiction of all the districts of Bristol county.

Appeals provided under sections twenty-seven, thirty-nine I and fifty-six of chapter one hundred and nineteen, when taken from a court in Suffolk county, except the municipal court of the city of Boston, shall be to the appeals session of the division of the juvenile court department for Boston, and such appeals from the division of the juvenile court department for Bristol county shall be to said division in its juvenile appeal session. Appeals from courts in Worcester county and Hampden county may be taken to the appeals sessions of the divisions of the juvenile court department for Worcester and Springfield, respectively.

Whenever the words "juvenile court" or "court", when the context indicates a juvenile court, are used in this chapter, they shall refer to a division of the juvenile court department. And when the context indicates personnel appointed to a juvenile court, the words "justice" or "special justice", provided that he is serving full time under the provisions of sections fifty-eight B or fifty-eight C, shall mean an associate justice of the trial court appointed to a division of the juvenile court department; and the words "clerk" or "clerk of court" shall mean the clerk of said division; and the words "assistant clerk", "deputy assistant clerk", "temporary clerk" or "temporary assistant clerk" shall mean, respectively, an assistant clerk, a deputy assistant clerk, temporary clerk or temporary assistant clerk of said division.

Amended by St.1965, c. 659, § 5; St.1969, c. 859, § 15; St.1972, c. 572; St.1972, c. 731, § 15; St.1978, c. 478, § 212.

CHAPTER 221

CLERKS, ATTORNEYS AND OTHER OFFICERS OF JUDICIAL COURTS

CLERKS OF COURTS

Sec.
26. Physicians or unregistered practitioners; clerk to report convictions.

MENTAL HEALTH LEGAL ADVISORS COMMITTEE

Sec.

34E. Appointment, etc.; executive director; legal advisors, list, fee schedule, compensation; volunteer legal assistance program; information program; procedures; funds.

ATTORNEYS AT LAW

44A. Hospital employees, etc., communication with attorney concerning personal injury cases; prohibition.

44B. Copies of section 44A; furnishing to hospitals; posting.

CLERKS OF COURTS

§ 26. Physicians or unregistered practitioners; clerk to report convictions

The clerk of any court in which a physician registered in this commonwealth is convicted of a felony or of a crime in connection with the practice of medicine, or in which an unregistered practitioner is convicted of holding himself out as a practitioner of medicine, or of practicing medicine, shall within one week thereafter report the same to the board of registration in medicine together with a copy of the court proceedings in the case. Failure to comply with this section shall be punished by a fine of not less than one nor more than ten dollars.

MENTAL HEALTH LEGAL ADVISORS COMMITTEE

§ 34E. Appointment, etc.; executive director; legal advisors, list, fee schedule, compensation; volunteer legal assistance program; information program; procedures; funds

The justices of the supreme judicial court shall appoint a mental health legal advisors committee consisting of fourteen attorneys, four of whom shall hold office for a term of four years, four for a term of three years, three for a term of two years and three for a term of one year. Upon completion of each such term of a member of said committee, his successor shall be appointed for a term of four years. The unexpired portion of any term which becomes vacant shall be filled by the justices of the supreme judicial court. Members of said committee may be removed by the justices of the supreme judicial court. No member of the committee shall receive any compensation for his services, but each member shall be reimbursed for actual traveling expenses incurred by him in attending the committee meetings. The membership of the committee shall contain a practicing attorney or attorneys from each of the mental health regions of the Commonwealth. The committee shall annually appoint and may at any time remove an executive director who shall be compensated from funds available therefor.

Any practicing member of the bar of the commonwealth who wishes to serve as a mental health legal advisor shall submit his name, office address and telephone number to the committee, which shall compile a list of all such names submitted, dividing the names into groups of lawyers practicing within each of the mental health regions of the commonwealth. Said list shall be updated quarterly. Said list of mental health legal advisors shall be circulated by the committee to the district courts and municipal courts of the commonwealth and to the department of mental health. The committee shall annually establish and approve a fee schedule for such services as shall be performed by the mental health legal advisors and said mental health legal advisors shall upon certificate of the judge appointing him be compensated in accordance therewith for services performed for an indigent patient.

It shall be the duty of the committee to develop a program of volunteer legal assistance. Such program shall utilize the participation of attorneys, professional and nonprofessional aides and all other groups who offer their services on a voluntary basis, to assist and advise indigent patients and residents in Bridgewater state hospital and all other mental health and retardation facilities of the commonwealth concerning their legal rights. Said volunteers may, subject to the approval of the committee, interview and examine all pertinent records of any such patient or resident. In addition, the committee shall appoint such clerical or other nonprofessional staff assistants as may be necessary to carry out the duties of the committee.

It shall be the duty of the committee to conduct a continuing program of information with regard to the legal rights of patients and residents at all mental health and retardation facilities in the commonwealth, which information shall be circulated to said patients and residents and their relatives, to the employees of the department of mental health, the members of the bar of the commonwealth and to anyone requesting such information. In addition, such information shall be made available to the public at large.

Upon petition of an indigent patient or resident in Bridgewater state hospital or any other mental health or retardation facility, private or public, or the legal guardian or a relative or a friend of such patient or resident, to any district or municipal court of the commonwealth, such court shall appoint from the list circulated of mental health legal advisors, a lawyer, practicing in the same or an adjoining mental health region as that in which the court is situated, to advise such patient of his legal rights and to represent such patient.

A mental health legal advisor so appointed may examine all records pertaining to such patient or resident, including the records of the department of mental health and the department of correction or any other agency of the government of the commonwealth or any other institution operated by the commonwealth or any political subdivision thereof or any hospital situated in the commonwealth. In addition, such advisor may make all necessary inquiries as he deems proper for the carrying out of his duties.

A mental health legal advisor shall be compensated for legal services performed for an indigent patient by the mental health legal advisor's committee in accordance with the fee schedule established by the mental health legal advisors committee as provided for herein.

The committee shall be eligible for federal funds and may accept gifts, grants or contributions from any source and may expend the same, for the purpose of compensating said mental health legal advisors.

Added by St.1973, c. 893.

ATTORNEYS AT LAW

§ 44A. Hospital employees, etc., communication with attorney concerning personal injury cases; prohibition

No person in the employ of, or in any capacity attached to or connected with, any hospital, infirmary or other institution, public or private, which receives patients for medical or surgical treatment, shall communicate, directly or indirectly, with any attorney at law, or any person representing such attorney, for the purpose of enabling such attorney, or any associate or employee of such attorney, to solicit employment to present a claim for damages or prosecute an action for the enforcement thereof, on behalf of any patient in any such institution. No such person in the employ of any hospital shall negotiate or attempt to negotiate the settlement of any such claim. A district court, upon complaint alleging violation of any provision of this section by any person employed by, or attached to, or connected with, any such hospital, infirmary or other institution situated within its judicial district, may issue an order of notice to the person complained of to show cause why he should not be ordered to desist and refrain from violation of any such provision on penalty of contempt.

Added by St.1939, c. 197, § 2. Amended by St.1943, c. 293.

§ 44B. Copies of section 44A; furnishing to hospitals; posting

The superintendent or other person in immediate charge of each hospital, infirmary or institution referred to in section forty-four A shall cause to be posted and kept posted in a conspicuous place therein printed copies of said section. Printed copies of said section shall, on application therefor, be furnished to each such hospital, infirmary and institution by the department of public health at a price to be determined by the commission on administration and finance. Any such superintendent or other person who violates any provision of this section shall be punished by a fine of not more than five hundred dollars.

Added by St.1939, c. 197, § 2. Amended by St.1939, c. 197, § 2.

TITLE II

ACTIONS AND PROCEEDINGS THEREIN

CHAPTER 231

PLEADING AND PRACTICE

PRACTICE

EVIDENCE

Sec.
85*l*. Emergency care, etc. of injured persons by members of ski patrols; exemption from civil liability.

PRACTICE

EVIDENCE

§ 85*l*. Emergency care, etc. of injured persons by members of ski patrols; exemption from civil liability

No member of a ski patrol duly registered in the National Ski Patrol system, who, in good faith, renders emergency care or treatment to a person who has become injured or incapacitated at a place or in an area where an emergency rescue can be best accomplished by the members of such a ski patrol together with their special equipment, shall be liable in a suit for damages as a result of his acts or omissions, either for such care or treatment or as a result of providing emergency transportation to a place of safety, nor shall he be liable to a hospital for its expenses if, under such emergency conditions, he causes the admission of such injured or incapacitated person.

Added by St.1970, c. 349.

CHAPTER 233

WITNESSES AND EVIDENCE

DYING DECLARATIONS AND DECLARATIONS OF DECEASED PERSONS

Sec.
65. Admissibility of declaration of decedent.

PROOF OF STATUTES, LAWS, ETC.

79. Records and copies of records of hospitals and certain institutions; admissibility in evidence.
79A. Certified copies of public and private records.

Sec.
79E. Reproductions of public or business records.
79H. Tort actions for personal injuries or death; admissibility of reports of deceased physicians.

DYING DECLARATIONS AND DECLARATIONS OF DECEASED PERSONS

§ 65. Admissibility of declaration of decedent

In any action or other civil judicial proceeding, a declaration of a deceased person shall not be inadmissible in evidence as hearsay or as private conversation between husband and wife, as the case may be, if the court finds that it was made in good faith and upon the personal knowledge of the declarant.

Amended by St.1941, c. 363, § 1; St.1943, c. 105, § 1; St.1943, c. 232, § 1.

PROOF OF STATUTES, LAWS, ETC.

§ 79. Records and copies of records of hospitals and certain institutions; admissibility in evidence

Records kept by hospitals, dispensaries or clinics, and sanatoria under section seventy of chapter one hundred and eleven shall be admissible, and records which the court finds are required to be kept by the laws of any other state or territory, or the District of Columbia, or by the laws and regulations of the United States of America pertaining to the department of national defense and the veterans administration, by hospitals, dispensaries or clinics, and sanatoria similarly conducted or operated or which, being incorporated, offer treatment free of charge, may be admitted by the court, in its discretion, as evidence in the courts of the commonwealth so far as such records relate to the treatment and medical history of such cases and the court may, in its discretion, admit copies of such records, if certified by the persons in custody thereof to be true and complete; but nothing therein contained shall be admissible as evidence which has reference to the question of liability. Copies of photographic or microphotographic records so kept by hospitals, dispensaries or clinics, or sanatoria, when duly certified by the person in charge of the hospital, dispensary or clinic, or sanatorium, shall be admitted in evidence equally with the original photographs of microphotographs.

A record kept by any hospital, dispensary or clinic, or sanatorium under section seventy of chapter one hundred and eleven which is required to be produced in court by any party shall be certified by the affidavit of the person in custody thereof to be a true and complete record, and shall be delivered by such hospital, dispensary or clinic, or sanatorium to the clerk of such court, who shall keep the same in his custody until its production is called for at the trial or hearing by the party requiring the said record. Such record, so certified and delivered shall be deemed to be sufficiently identified to be admissible in evidence if admissible in all other respects. The party requiring the production of said record and, in the discretion of the court, any other party may examine said record in the custody of the clerk at any time before it is produced in court. The clerk upon completion of such trial or hearing shall notify such hospital that said record is no longer required and will be returned to the hospital by certified mail unless an authorized representative of the hospital calls for the same at the office of said clerk within seven days of said notice.

Amended by St.1941, c. 389, § 2; St.1943, c. 233, § 1; St.1946, c. 473, § 1; St.1948, c. 74; St.1957, c. 206, § 1; St.1959, c. 200; St.1974, c. 225.

§ 79A. Certified copies of public and private records

Copies of public records, of records described in sections five, seven and sixteen, respectively, of chapter sixty-six, and of records of banks, trust companies, insurance companies and hospitals, whether or not such records or copies are made by the photographic or microphotographic process, shall, when duly certified by the person in charge thereof, be admitted in evidence equally with the originals.

Added by St.1941, c. 662, § 2. Amended by St.1948, c. 154.

§ 79E. Reproductions of public or business records

If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity, has kept or recorded any memorandum, writing entry, print, representation or combination thereof of any act, transaction, occurrence or event, and in the regular course of business has caused any or all of the same to be recorded, copied or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. Such reproduction, when satisfactorily identified, shall be as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not and an enlargement or facsimile of such reproduction shall be likewise admissible in evidence if the original reproduction is in existence and available for inspection under direction of the court. The introduction of a reproduced record, enlargement or facsimile, shall not preclude admission of the original.

Added by St.1952, c. 120. Amended by St.1955, c. 125; St.1962, c. 90; St.1965, c. 661; St.1968, c. 372.

§ 79H. Tort actions for personal injuries or death; admissibility of reports of deceased physicians

In an action of tort for personal injuries or death, or for consequential damages arising from such personal injuries, the medical report of a deceased physician who attended or examined the plaintiff, including expressions of medical opinion, shall, at the discretion of the trial judge, be admissible in evidence, but nothing therein contained which has reference to the question of liability shall be so admissible. Any opposing party shall have the right to introduce evidence tending to limit, modify, contradict or rebut such medical report. The word "physician" as used in this section shall not include any person who was not licensed to practice medicine under the laws of the jurisdiction within which such medical attention was given or such examination was made.

Added St.1967, c. 265, § 1.

TITLE III

REMEDIES RELATING TO REAL PROPERTY

CHAPTER 239

SUMMARY PROCESS FOR POSSESSION OF LAND

Sec.
2A. Reprisal for reporting violations of law or for tenant's union activity; defense; presumption.
8A. Rent withholding; grounds; amount claimed; presumptions and burden of proof; procedures.

§ 2A. Reprisal for reporting violations of law or for tenant's union activity; defense; presumption

It shall be a defense to an action for summary process that such action or the preceding action of terminating the tenant's tenancy, was taken against the tenant for the tenant's act of commencing, proceeding with, or obtaining relief in any judicial or administrative action the purpose of which action was to obtain damages under or otherwise enforce, any federal, state or local law, regulation, by-law, or ordinance, which has as its objective the regulation of residential premises, or exercising rights pursuant to section one hundred and twenty-four D of chapter one hundred and sixty-four, or reporting a violation or suspected violation of law as provided in section eighteen of chapter one hundred and eighty-six, or organizing or joining a tenants' union or similar organization. The commencement of such action against a tenant, or the sending of a notice to quit upon which the summary process action is based, or the sending of a notice, or performing any act, the purpose of which is to materially alter the terms of the tenancy, within six months after the tenant has commenced, proceeded with or obtained relief in such action, exercised such rights, made such report or organized or joined such tenants' union, or within six months after any other person has taken such action or actions on behalf of the tenant or in, or relating to the building in which the tenant resides, shall create a rebuttable presumption that such summary process action is a reprisal against the tenant for engaging in such activities, or was taken in the belief that the tenant had engaged in such activities. Such presumption may be rebutted only by clear and convincing evidence that such action was not a reprisal against the tenant and that the plaintiff had sufficient independent justification for taking such action, and would have in fact taken such action, in the same manner and at the same time the action was taken, even if the tenant had not commenced any legal action, made such report or engaged in such activity.

Added by St.1969, c. 701, § 2. Amended by St.1972, c. 99, § 2; St.1973, c. 858, § 4; St.1978, c. 149, § 2.

§ 8A. Rent withholding; grounds; amount claimed; presumptions and burden of proof; procedures

In any action under this chapter to recover possession of any premises rented or leased for dwelling purposes, brought pursuant to a notice to quit for nonpayment of rent, or where the tenancy has been terminated without fault of the tenant or occupant, the tenant or occupant shall be entitled to raise, by defense or counterclaim, any claim against the plaintiff relating to or arising out of such property, rental, tenancy, or occupancy for breach of warranty, for a breach of any material provision of the rental agreement, or for a violation of any other law. The amounts which the tenant or occupant may claim hereunder shall include, but shall not be limited to, the difference between the agreed upon rent and the fair value of the use and occupation of the premises, and any amounts reasonably spent by the tenant or occupant pursuant to section one hundred and twenty-seven L of chapter one hundred and eleven and such other damages as may be authorized by any law having as its objective the regulation of residential premises.

Whenever any counterclaim or claim of defense under this section is based on any allegation concerning the condition of the premises or the services or equipment provided therein, the tenant or occupant shall not be entitled to relief under this section unless: (1) the owner or his agents, servants, or employees, or the person to whom the tenant or occupant customarily paid his rent knew of such conditions before the tenant or occupant was in arrears in his rent; (2) the plaintiff does not show that such conditions were caused by the tenant or occupant or any other person acting under his control; except that the defendant shall have the burden of proving that any violation appearing solely within that portion of the premises under his control and not by its nature reasonably attributable to any action or failure to act of the plaintiff was not so caused; (3) the premises are not situated in a hotel or motel, nor in a lodging house or rooming house wherein the occupant has maintained such occupancy for less than three consecutive months; and (4) the plaintiff does not show that the conditions complained of cannot be remedied without the premises being vacated.

Proof that the premises are in violation of the standard of fitness for human habitation established under the state sanitary code, the state building code, or any other ordinance, by-law, rule or regulation establishing such standards and that such conditions may endanger or materially impair the health, safety or well-being of a person occupying the premises shall create a presumption that conditions existed in the premises entitling the tenant or occupant to a counterclaim or defense under this section. Proof of written notice to the owner or his agents, servants, or employees, or to the person to whom the tenant or occupant customarily paid his rent, of an inspection of the premises, issued by the board of health, or in the city of Boston by the commissioner of housing inspection, or by any other agency having like powers of inspection relative to the condition of residential premises, shall create a presumption that on the date such notice was received, such person knew of the conditions revealed by such inspection and mentioned in such notice. A copy of an inspection report issued by any such agency, certified under the penalties of perjury by the official who inspected the premises, shall be admissible in evidence and shall be prima facie evidence of the facts stated therein.

There shall be no recovery of possession pursuant to this chapter pending final disposition of the plaintiff's action if the court finds that the requirements of the second paragraph have been met. The court after hearing the case may require the tenant or occupant claiming under this section to pay to the clerk of the court the fair value of the use and occupation of the premises less the amount awarded the tenant or occupant for any claim under this section, or to make a deposit with the clerk of such amount or such installments thereof from time to time as the court may direct, for the occupation of the premises. In determining said fair value, the court shall consider any evidence relative to the effect of any conditions claimed upon the use and occupation of residential premises. Such funds may be expended for the repair of the premises by such persons as the court after a hearing may direct, including if appropriate a receiver appointed as provided in section one hundred and twenty-seven H of chapter one hundred and eleven. When all of the conditions found by the court have been corrected, the court shall direct that the balance of funds, if any, remaining with the clerk be paid to the landlord. Any tenant or occupant intending to invoke the provisions of this section may, after commencement of an action under this chapter by the landlord, voluntarily deposit with the clerk any amount for rent or for use and occupation which may be in dispute, and such payments shall be held by the clerk subject to the provisions of this paragraph.

There shall be no recovery of possession under this chapter if the amount found by the court to be due the landlord equals or is less than the amount found to be due the tenant or occupant by reason of any counterclaim or defense under this section. If the amount found to be due the landlord exceeds the amount found to be due the tenant or occupant, there shall be no recovery of possession if the tenant or occupant, within one week after having received written notice from the court of the balance due, pays to the clerk the amount due the landlord, together with interest and costs of suit, less any credit due the tenant or occupant for funds already paid by him to the clerk under this section. In such event, no judgment shall enter until after the expiration of the time for such payment and the tenant has failed to make such payment. Any such payment received by the clerk shall be held by him subject to the provisions of the preceding paragraph.

Any provision of any rental agreement purporting to waive the provisions of this section shall be deemed to be against public policy and void. The provisions of section two A and of section eighteen of chapter one hundred and eighty-six shall apply to any tenant or occupant who invokes the provisions of this section.

Added by St.1965, c. 888. Amended by St.1967, c. 420, § 1; St.1969, c. 355; St.1973, c. 471; St.1973, c. 1007, § 3; St.1974, c. 269, §§ 1, 2; St.1975, c. 467, § 3; St.1977, c. 963, § 1; St.1979, c. 198, §§ 1, 2.

TITLE IV

CERTAIN WRITS AND PROCEEDINGS IN SPECIAL CASES

CHAPTER 252

IMPROVEMENT OF LOW LAND AND SWAMPS

IMPROVEMENT OF LOW LAND

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3. Board; investigations; reports.
4. Board; power to engineers, etc.; expenses.
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CONSTRUCTION OF ROADS, ETC., TO SWAMPS, ETC.

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GREENHEAD FLY CONTROL PROJECTS

Sec.
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IMPROVEMENT OF LOW LAND

§ 1. General provisions

If it is necessary or useful (1) to drain or flow a meadow, swamp, marsh, beach or other low land held by two or more proprietors, or (2) to remove obstructions in rivers or streams leading thereto or therefrom, or (3) to eradicate mosquitoes in any area infested thereby, including, in respect to each such purpose, purposes incidental thereto, such improvements may be made as provided in this chapter.

Amended by St.1972, c. 36, § 1.

§ 2. State reclamation board; designation of members; compensation and expenses

One employee of the department of environmental quality engineering designated by its commissioner, one employee of the department of food and agriculture designated by its commissioner, and one employee of the department of environmental management designated by its commissioner, shall constitute the state reclamation board, in this chapter called the board. The designation of any member of said board may be revoked at any time, and in such case or in case of the resignation or disability of any member his successor shall be designated in the same manner as in the original designation. The board shall serve in the department of food and agriculture, and the members thereof shall receive no additional compensation for service on said board, but shall be entitled to their reasonable traveling and other expenses incurred in the performance of their duties.

Amended by St.1972, c. 36, § 2; St.1975, c. 706, §§ 297, 298; St.1977, c. 641.

§ 3. Board; investigations; reports

The board may investigate the question of utilizing wet lands, including meadows, swamps, marshes, beaches and other low lands, and may ascertain what lands, if any, may advantageously be drained for agricultural or industrial uses, the protection of the public health, the utilization of deposits therein, or for other purposes. It may publish and disseminate facts of general interest ascertained in the conduct of any such investigation, and may make and publish surveys of tracts of land in need of drainage, showing their situation, areas and outlets, the best methods and the cost of draining them, the uses to which they are best adapted, and such other details as it deems advisable. It shall make an annual report.

§ 4. Board; power to engineers, etc.; expenses

In carrying out the provisions of this chapter, the board may employ necessary engineers, assistants, or other agents, who may enter on land which the board desires to survey or examine. The board shall also be allowed other necessary expenses incurred in the performance of its duties.

Amended by St.1972, c. 36, § 3.

§ 4A. Proceedings under §§ 1–14C; parties; petition; notice

The commonwealth, acting through one or more state departments, or through the metropolitan district commission in respect to the metropolitan parks or water district or either metropolitan sewerage district, and any city, town or district, or any combination thereof, to the extent of their ownership of any area described in section one, may be parties, in their proprietary capacity, to proceedings under sections one to fourteen C, inclusive, in respect to any purpose set forth in said section one, to the same extent as individual proprietors. Said bodies politic, or any combination thereof, may also institute proceedings under said sections in their governmental capacity, in any case where it appears that the public health, safety or convenience will be promoted by improvements to effect any of said purposes, but in such proceedings no district shall be organized, and the improvements shall be constructed and maintained as provided in section five A. The petition in such a proceeding need cover only matters pertinent to the project therein set forth, and the provisions of section five requiring that the petitioners constitute a majority ownership of the lands affected shall not apply to such petition. Individuals and corporations qualifying as proprietors may join in any petition authorized in this section. Action by any such body politic hereunder shall be taken by the administrative head of the state department or commission, or by the mayor, selectmen, or prudential committee or other governing body, as the case may be. Notice of the hearing before said board on such a petition shall be given as provided in the first paragraph of section five to all petitioners and to the administrative heads of such state departments and commissions, mayors of such cities, selectmen of such towns, and the prudential committees or other governing bodies of such districts, as the said board may determine, and to all other known proprietors of lands to be affected by such improvements. Cities, towns and districts are hereby authorized to raise and appropriate money for such purposes.

§ 5. Petition to the board; investigation; appointment and compensation of district commissioners

The proprietors of any area described in section one or a majority in interest either in value or area may petition the board setting forth their desire to improve such area, the necessity or desirability of such improvements, the objects to be accomplished, a general description of the lands proposed to be affected and the names of known owners of said lands. Upon receipt of said petition and of a sum sufficient to meet its expenses therefor, the board shall proceed to make such investigations and such surveys of said lands as may be necessary to determine the approximate area and boundaries thereof, the need of the proposed improvements, the probable benefit, if any, to the public health, the agricultural or other uses to which the lands can be put and their probable value for such uses after the improvements are completed, and in general the practicability and advisability of undertaking the proposed improvements. Any unexpended balance of the amount so received shall be reimbursed to the contributors in proportion to their contributions. If such improvements appear to the board to be advisable and practicable, the board shall give notice of the petition therefor by publication in a newspaper published in the county where the greater part of the land lies and by registered mail to each known proprietor, stating the date of a hearing to be held by the board not less than seven days after the publication of said notice and the date of mailing notices to the proprietors. After the hearing, if the board approves the proposed improvements, it shall determine whether or not the organization of a reclamation district is necessary to construct and maintain said improvements.

If the board decides that a district should be organized, it shall issue a certificate appointing three, five or seven district commissioners, who shall be sworn to the faithful performance of their duties, and shall authorize said commissioners to form a reclamation district under the following section. The board shall fix the compensation of said commissioners, which shall not exceed ten dollars for each day of actual service, and shall allow them necessary traveling expenses incurred in the performance of their duties. Such compensation and expenses shall be paid by the district and the district shall reimburse the contributors to the expenses of the board the amounts of their several contributions less any unexpended balances returned to them as hereinbefore provided, and said expenditures shall be a part of the total expense of the improvements. Any commissioner may be removed by the board for cause and the board may fill vacancies. The certificate of appointment of said commissioners shall be revoked by the board when the objects for which they were appointed have been accomplished. For the purpose of this and the eleven following sections, a mortgagor or mortgagee in possession shall be deemed a proprietor.

Amended by St.1964, c. 550, § 1.

§ 5A. Improvements; undertaking without forming district; commissioners; powers; mosquito control

If the board determines that the proposed improvements should be undertaken and that their construction and maintenance may be effected without the formation of a district, and in every such case where the board is petitioned by a body politic in its governmental capacity under section four A, it shall notify all persons and bodies politic to be benefited thereby of the estimated expense of constructing the proposed improvements, including land damages, if any, and of the maintenance thereof. Upon receipt of sums of money sufficient to cover such estimated construction expense, or of any money which can be used for such purposes to the advantage of the contributors, the board shall designate an identifying name under which said improvements shall be made and shall deposit the money so received with the state treasurer, who shall hold such money in a special fund or funds for such purpose, and shall disburse the same on warrants drawn by the board. The board shall thereupon issue a certificate appointing one or more commissioners, who shall be sworn to the faithful performance of their duties, and shall authorize said commissioners to proceed to make the improvements, which may be made at such places, either within or without the commonwealth, as may be necessary or convenient to make the improvements effective; and said commissioners shall thereupon proceed so to do. The board shall fix the compensation of said commissioners and shall allow them their necessary travel and other expenses necessarily incurred in the performance of their duties. Such compensation and expenses shall constitute a part of the expense of making and maintaining such improvements. Any commissioner may be removed by the board for cause and the board may fill vacancies. The board may discharge the commissioners when the improvements are completed and may appoint others to care for maintenance. Any excess funds received under authority of this section shall be returned to the contributors thereof in proportion to the contributions. If the sums so estimated are not sufficient to complete such improvements, the board shall determine the amount of the estimated additional cost thereof and shall notify the original contributors of their shares of such additional cost. The board shall instruct the commissioners not to continue with such improvements until such additional funds are received by the board, and such commissioners, after receipt of such instructions, shall incur no further expense in connection with such improvements until authorized so to do by the board. If one or more, but less than all, of several petitioners provide their respective proportions of the fund estimated as necessary to make such improvements, the board may appoint commissioners to make such portion of such improvements as, in its opinion, will benefit the contributors. For the purpose of effecting such improvements and providing for their maintenance as provided in this section, the board shall have all the powers conferred by sections two, three, four, five, except the last paragraph thereof, and eight, and the commissioners by it appointed shall have all the powers conferred upon district commissioners under sections twelve and thirteen, provided that in taking by eminent domain or acquiring by purchase, gift or otherwise, land or other property or any interest therein, the commissioners so appointed shall take or acquire the same in the name and on behalf of the city or town wherein the land or other property or interests are situated, but not until such city or town has duly authorized such taking, has assumed all liability for damages therefor and has complied with all provisions of law applicable to land takings by cities or towns. All amounts for which a city or town may be liable hereunder, together with interest and costs, may be contributed by persons or bodies politic benefited by such improvements in proportion to their respective benefits or otherwise. Any city or town included in an area designated by an identifying name, under any general or special law, as a mosquito control project for the purposes of this section, which has withdrawn from membership in such project may, with the approval of the board and upon such conditions as the board may prescribe, vote to become a member of the existing mosquito control project within its area.

Amended by St.1960, c. 199.

§ 5B. Local boards of health; power to determine mosquito breeding area a public nuisance; abatement

The board of health of a city or town not included in an area designated by an identifying name for the purpose of section five A, or the commissioners appointed to make improvements on behalf of a mosquito control district under such a name, as provided in said section, may determine any area infested by mosquitoes, or likely to produce mosquitoes within the limits of any such city or town or of such district, to be a public nuisance, and may serve upon the owner, occupant or person in charge of such area, written notice of the presence of such nuisance with a statement that such mosquitoes cause a public nuisance, together with directions to abate the same, giving the methods of treatment for the abatement thereof, and stating a time within which the nuisance shall be abated in accordance with the methods given therein. If the person so notified refuses or neglects to abate such nuisance the board of health or the commissioners, as the case may be, may abate such nuisance in such manner as may be approved by the board, and may maintain such works as may be necessary to prevent its recurrence, and said boards of health or commission may employ all necessary assistants for this purpose, who may enter upon public or private property, if such entry is necessary for this purpose.

Amended by St.1964, c. 550, § 2; St.1965, c. 699; St.1974, c. 349, § 2.

§ 6. Reclamation district; formation

The district commissioners, in this and the ten following sections called the commissioners, after being sworn, shall call a meeting of the proprietors of the lands to be improved, by giving in such manner as the board may order, a notice to each known proprietor, signed by the commissioners and setting forth the time and place of a meeting for the purpose of organizing a reclamation district to carry out the proposed improvements and maintain the same after they are completed. The notice shall be in the form of a warrant specifying the matters upon which action is to be taken at the meeting. The chairman of the commissioners or another commissioner designated by him shall call the meeting to order and shall determine whether or not proprietors constituting a majority in interest, in either value or area, are present or represented by proxies duly executed and placed in the hands of other proprietors prior to said meeting. Lacking such a majority, the meeting shall have no power to act, but the commissioners may, in the manner above provided, call additional meetings for the same purpose. The meeting shall elect a temporary clerk, who shall be sworn, and a moderator. The moderator shall submit to the proprietors present the question of accepting sections one to fourteen B, inclusive, and of organizing a reclamation district, and if a majority of those present in person or by proxy and voting on the question, vote to accept and to organize such district the provisions of said sections shall take full effect. The vote shall be recorded and a copy thereof shall be filed with the board. The meeting may then proceed to act upon the other articles, if any, contained in the warrant. Such district shall at the same meeing elect by ballot a district clerk and a district treasurer, who may be the same person, to hold office until one year from the next succeeding annual meeting and at each annual meeting after the first a clerk and treasurer shall be elected by ballot for one year. There shall also be elected by ballot a prudential committee of three members who shall hold office, one for three years, one for two years, and one for one year, from the next succeeding annual meeting. At each annual meeting after the first a member of said committee shall be elected by ballot for three years. The aforesaid officers of the district shall hold office until their successors are elected and qualified. The district may also, at the first or any subsequent meeting, borrow for preliminary or current expenses such sums as may be necessary and may issue therefor notes payable in not more than two years from their dates. Notes issued under this provision shall be subject to the provisions of chapter forty-four and to the other requirements for district notes imposed by section ten. The proceeds of such notes shall be held by the treasurer of the district, and payments therefrom shall be made only on vouchers duly approved by a majority of the prudential committee.

Subsequent meetings of the district shall be called by the clerk at the request of the commissioners or any two or more proprietors, or, in case the clerk neglects or refuses to call a meeting when so requested such meeting may upon application by said commissioners or two or more proprietors be called upon a warrant from a justice of the peace directed to one of the applicants and requiring him to give notice of said meeting as hereinafter provided. Notices of meetings shall be given by posting copies of the warrant in two or more public places within the district or by mailing copies of said warrant to each known proprietor at least seven days before the time set for the meeting. At each meeting a moderator shall be chosen who shall have the powers of the moderator of a town meeting so far as may be necessary. The clerk shall preside at each meeting after the first until a moderator is chosen.

The officers of the district shall be sworn to the faithful performance of their duties. Any vacancy occurring in the office of clerk, treasurer, or member of the prudential committee may be filled by the district for the remainder of the unexpired term at any legal meeting called for the purpose, or in case of a vacancy in the office of clerk or treasurer or disability affecting either of said officers the prudential committee may appoint a person to fill said vacancy until an election can be held or the disability is removed. Such temporary appointee shall be sworn and shall perform the duties of the office to which he is appointed during his tenure thereof.

The prudential committee shall have charge of expenditures on account of the district for maintenance of the improvements made under sections one to fourteen B, inclusive, and shall exercise the authority conferred upon the district by law except as otherwise expressly provided, and subject to the by-laws of the district and such instructions, rules and regulations as the district may impose by its vote.

The treasurer shall give bond for the faithful performance of his official duties in a sum and with sureties approved by the prudential committee. He shall receive all money belonging to the district except as otherwise specified in this and the ten following sections and shall make payments and account for the same in accordance with the requirements of sections one to fourteen B, inclusive, and of chapter forty-four so far as applicable, under direction of the district or of the prudential committee. A temporary treasurer appointed to fill a vacancy, as above provided, shall give bond in the same manner as the treasurer.

A district organized under the provisions of this section may adopt by-laws consistent with the laws applicable to such district and subject to the approval of the board. Such by-laws may provide for proxy voting by the members at any or all meetings of the district. The district shall have such rights and powers as may be necessary and proper for operating and maintaining the improvements made by the commissioners, and for making, operating and maintaining such further improvements as may be authorized under section fourteen A. The members of the district shall be the proprietors from time to time of lands lying within its limits. No such district shall dissolve without specific authorization by the general court, which shall not be given until provision has been made for payment of the obligations of said district.

§ 6A. Reclamation district; liability insurance

Any district established under this chapter may pay a proper charge for effecting insurance providing an indemnity or protection of such district or of any officer or employee of such district, whose services as such is approved by the commissioners thereof, against loss by reason of liability to pay damages to others for bodily injuries, including death at any time resulting therefrom, or for damage to property caused by any act which is within the scope of his official duties or employment including the operation of any motor or other vehicle equipment or vessel owned or leased by such district, and to pay the proper charge for effecting insurance to cover the district's liability to pay workmen's compensation and to pay the proper charge to prevent loss by reason of destruction or damage to buildings or personal property by fire or other causes normally covered by fire insurance policies, and to pay the proper charge for effecting insurance to prevent loss by reason of damage to motor vehicles owned by such district.

Added by St.1962, c. 283. Amended by St.1971, c. 258.

§ 7. Surveys and investigations; expense of improvements; hearings; recording of improvements

As soon as the district shall have been organized under the provisions of the preceding section the commissioners shall, under direction of the board, cause the necessary surveys and investigations to be made and shall prepare a plan showing in detail the boundaries of the district and the improvements to be effected. On the basis of such surveys and investigations the commissioners shall prepare an estimate of the total expense of the proposed improvements and shall determine the percentage of such expense to be paid by each proprietor, based on the estimated special benefit to his land in excess of the damage thereto by the use thereof for the proposed improvements. If such damage to the land of any proprietor exceeds the special benefit thereto they shall award him damages for such excess. They shall report their plan, estimate and determination to the board, which shall approve, disapprove or modify such plan and estimate. The commissioners shall also notify each proprietor of such determination by delivering a copy thereof at his residence or by sending the same by registered mail to his last known address and shall certify to the board the date on which such notice is given. If any proprietor is aggrieved by the determination of the commissioners he may, within fifteen days after notice thereof, file with the board his objections thereto and if no such objections are filed by any proprietor within the fifteen days above specified then the determination of the commissioners shall be final. The board shall, within thirty days after receiving notice of objections by any proprietor against the determination, notify all the proprietors that such objections have been received and shall hold a hearing thereon, but such hearing shall not be held within seven days after notice is given to all the proprietors that objections have been filed. If objections are made by more than one proprietor all such objections shall be considered in one hearing. After such hearing the board may confirm or modify the determination and shall notify the proprietors of its decision. If any proprietor is dissatisfied with the action of the board he may petition the superior court in the county in which the greater part of the land included within the district is situated, making all the proprietors who have not joined in his petition parties respondent and praying for a revision of such decision, provided that such petition shall be entered not later than thirty days after notice of the decision. The court sitting without jury shall hear the petition and shall confirm or alter the percentages previously determined to be payable by any or all said proprietors, as justice may require. Such petition shall not operate to suspend or delay other proceedings by the board or commissioners on the land to be improved. The expenses incurred under this section shall constitute a part of the total expense of the improvements and shall be paid by the district in the same manner as the remainder of such expense.

As soon as the percentages payable as aforesaid by said proprietors in the case of original and of further improvements have been finally determined in accordance with this section the board shall on behalf of the reclamation district cause to be recorded in the registry of deeds of every county or district in which the benefited area is situated a description sufficiently accurate for identification of such area, a copy of a plan to which reference shall be made and also an estimate of the total amount to be assessed on each parcel of land within such area, all as set forth in section two of chapter eighty. No original or further improvements shall be approved by the board until after such recording.

§ 8. Expenses; contribution by state

Should the board be of the opinion that a part of the expense of the improvements made under sections one to fourteen B, inclusive, should be paid by the commonwealth for the benefit of the public health of said commonwealth as a whole it shall estimate the amount which in its opinion should be so paid and shall include the same in its estimates under section four of chapter twenty-nine.

§ 9. Meeting; choosing method of financing; bonds

As soon as possible after the recording of the description, plan and estimate as provided in section seven, the commissioners shall request the clerk to call a meeting of the district for the purpose of deciding upon a method of financing such improvements in accordance with this or the following section; provided, that the commissioners may in their discretion insert an article covering this question in the warrant for the meeting called to organize the district and the district at said meeting or any adjournment thereof may decide upon a method of financing. Any action under this chapter which involves expenditure by the district shall require a vote of proprietors representing a majority in interest both in acreage and value of the area included in the district. The commissioners shall, if the district so votes, petition the county commissioners of the county where the greater part of the land lies, annexing a certified copy of the petition under section five and of the determination of the board thereon, and a statement of the estimated expense of the proposed improvements and shall request the county commissioners to vote to pay in the first instance the total expense involved in making the improvements approved by the board, and the said county commissioners may so vote. To defray any expense incurred by said county commissioners under such vote, the county treasurer, with the approval of the county commissioners, may issue bonds or notes of the county to an amount not exceeding such expense, payable in such period, not exceeding twenty-five years from their dates of issue, as the county commissioners may determine. Such bonds or notes shall be signed by the county treasurer and countersigned by a majority of the county commissioners. The county may sell the said securities at public or private sale upon such terms and conditions as the county commissioners may deem proper, but not for less than their par value. The first payment on account of the principal may, if the county commissioners so decide, be deferred for not more than five years after the date of issue of the bonds or notes, but such bonds or notes shall be subject to the provisions of chapter thirty-five except as otherwise provided herein. Payments on account of principal and interest shall be made by the county and repaid to the county by the district.

§ 10. Financing; power of district to adopt alternative methods

The district may vote to adopt any of the three methods of financing hereinafter specified. (1) If all the members of the district agree, the district may raise by assessments upon the proprietors or by voluntary contributions and deposit with the state treasurer the total sum required to meet the estimated expense of the improvements. Such deposits shall be held by the state treasurer to the credit of the district, and payments shall be made therefrom as provided in section fourteen. (2) The district may pay the whole expense of the improvements from time to time as the work is performed and for this purpose may incur debt by a temporary loan in anticipation of the collection of assessments from the members of the district during the calendar year in which said debt is incurred or during the next succeeding calendar year. (3) The district may incur debt to the amount necessary to pay the estimated expense of the proposed improvements and may issue therefor notes or bonds, and may, if the board approves, issue notes or bonds on the condition that the first payment on account of the principal shall be deferred for a period of not more than five years from the date of issue of such notes or bonds and that the whole amount of such debt shall be payable within a period of not more than twenty-five years after such notes or bonds are issued.

Indebtedness incurred by the district under the provisions of this section or of section fourteen A shall be subject to chapter forty-four and to other provisions of the General Laws applicable to notes and bonds of districts except as otherwise provided in sections one to fourteen B, inclusive. Money received from the sale of notes or bonds issued under this section shall be deposited with the state treasurer and held by him to the credit of the district. If the district issues notes or bonds and thereafter the general court makes an appropriation to cover such part, if any, of the expenses of the improvements as it shall deem to be for the benefit of the public health of the commonwealth as a whole, the state treasurer may, in his discretion, make all or any part of such appropriation available to redeem notes or bonds of the district and shall hold the balance, if any, to the credit of the district to be used for payment of the expense of the improvements. If, after payment of the total expense of the improvements, money remains in the hands of the state treasurer to the credit of the district the same shall be paid to the treasurer of the district and shall be used to redeem outstanding notes or bonds which shall be cancelled by said district treasurer and not reissued. Bonds or notes issued under this section shall be the general obligations of the district by which they are issued.

§ 11. Assessments; collections

The clerk of the district shall certify to the assessors of the town or towns in which the land of the district lies all sums of money voted to be raised and all sums payable annually on account of the principal and interest due on bonds or notes issued under the provisions of section nine or ten, together with the amount to be paid by each proprietor according to the determination made under section seven, and said clerk shall also file an attested copy of such certification with the board. The amounts so certified shall be assessed upon the lands of the several proprietors within the area, and be committed to the collector of taxes of the town wherein the land assessed is situated, who shall have and exercise the same powers and duties in relation to the collection of such assessments as he has and exercises relative to the collection of town taxes. The collector shall remit weekly to the district treasurer all sums collected by him on account of such assessments. An assessment made hereunder shall be a lien upon the land assessed therefor, and such lien shall take effect upon the recording of the description, plan and estimate under section seven, and shall continue for a period of two years from July first of the year of assessment.

§ 12. Commissioners; powers and duties

If sections one to seven, inclusive, have been complied with, and payment of the expense of the improvements has been arranged under section nine or ten, the commissioners shall carry out said improvements in such manner as the board may approve. The commissioners may employ suitable persons to perform the work under their direction. So far as may be necessary to effect the improvements as approved by the board, the commissioners may take on behalf of the district, in the manner provided by chapter seventy-nine, lands, easements and rights in lands, if the improvements are for a public use, and may purchase and convey real and personal property both within and beyond the limits of the commonwealth. Any person damaged in his property by any action under this or the following section may recover his damages from the district in the manner provided by said chapter seventy-nine and such damages shall constitute a part of the total expense of the improvements.

§ 13. Erection of temporary dams; aggrieved parties; notice; appeal

If the commissioners find it necessary or expedient to lower or raise the water to obtain a view of the land or for the more convenient or expeditious removal of obstructions, they may open the flood gates of any mill or make other needful passages through or around the dam thereof, or erect a temporary dam on the land of a person not a party to the proceedings, and may maintain such dam or passages as long as necessary for such purposes; but before so doing, they shall give to such person reasonable written notice of their intention. If such person appeals from their decision and gives reasonable written notice thereof to any commissioner, the commissioners shall suspend all proceedings upon his land until such appeal is determined; provided, that the petition therefor is entered in the superior court for the county where the greater part of the land improved lies not later than thirty days after the time of giving such notice.

§ 14. Expenses; submission to the board; approval; payment

The commissioners shall at least once a month at such time as the board may require submit to it the accounts and vouchers for expenses incurred in meeting the cost of required improvements under sections one to fourteen B, inclusive. Such accounts and vouchers shall be inspected by the board and if it approves the same it shall forward them to the county treasurer or to the state treasurer, as the case may be, for payment from any funds which may be available for the purpose. Expenses for maintenance or for further improvements incurred under the direction of the prudential committee of the district as provided in section fourteen A shall be paid by the district treasurer on presentation by the prudential committee of accounts and vouchers for such expenses; provided, that accounts and vouchers for expenses incurred in connection with further improvements shall be subject to the approval of the board before payment. The commissioners appointed under section fourteen A to make further improvements shall present their accounts and vouchers to the board for approval in the same manner as the commissioners appointed under section five to make the original improvements.

§ 14A. Reclamation districts; further improvements; procedure

A reclamation district organized under this chapter may from time to time at a legal meeting called for the purpose, vote to undertake further improvements within the district, to raise money by assessment to meet the expense thereof and to incur debt therefor in the manner provided by section ten. Such vote shall not be passed until after completion of the original improvements. The district may also vote to request the board to appoint commissioners to carry out the proposed further improvements. Such commissioners shall be appointed by certificate of the board as provided in section five. The district may, however, authorize its prudential committee to carry out such further improvements. The commissioners or prudential committee acting under this section shall have and exercise, so far as necessary, the powers of commissioners appointed under section five to make original improvements. The clerk of the district shall notify the board of the vote taken and the commissioners or prudential committee shall submit to the board within a reasonable time the plan or plans for such improvements, which shall not be undertaken until the board approves the same. The district may assess upon its members such sums as may be necessary to pay for improvements so voted and for the maintenance of all improvements made under sections one to fourteen B, inclusive, in the manner provided in section eleven for assessment of the expense of the original improvements. Such assessment shall be subject to the same provisions as the assessment authorized in said section eleven, shall be collected in the same manner and shall be paid to the treasurer of the district.

§ 14B. Additional water power or supply; prescriptive rights; necessity of vote before development

No person obtaining an additional water power or water supply by the doing of any work contemplated by sections one to fourteen B, inclusive, shall gain a prescriptive right to the use thereof, nor be entitled to any compensation for the taking thereof under said sections by the removal of any dam or flashboards or by the changing of the height or dimensions of any dam. No water power may be developed in a reclamation district organized under this chapter except by vote of the district and approval by the board.

§ 14C. Injury to improvements; penalty; damages

Whoever obstructs or injures any ditch, tide gate, dike or other structure constructed or used for any purpose authorized by any provision of sections one to fourteen B, inclusive, shall be punished by a fine of not less than ten dollars. The state reclamation board may also recover, in the name of the commonwealth, for any such obstruction or injury, in an action of contract, the amount of the damages sustained by reason thereof, and the provisions of section five A, relative to the disposition of money therein referred to, shall govern the disposition of money recovered in such action.

CONSTRUCTION OF ROADS, ETC., TO SWAMPS, ETC.

§ 15. General provisions

A town or person owning low land, ponds, swamps, quarries, mines or mineral deposits, which, on account of adjacent lands belonging to other persons or occupied as a highway, cannot be approached, worked, cultivated, drained or used to advantage in the ordinary manner without crossing such land or highway, may construct roads, drains, ditches, tunnels and railways thereto and, when the construction of such improvements is required by public convenience and necessity, may take the land of such other persons for the location of such improvements as hereinafter provided.

§ 16. Petition; security

A party desiring to make such improvements shall file a petition therefor with the county commissioners for the county where the greater part of the land lies, setting forth the names of the persons interested, if known to the petitioner, and also in detail the nature of the proposed improvement and the situation of the adjoining land. The petitioner shall give such county security satisfactory to the commissioners that he will indemnify such county from all damages and charges which it is obliged to pay by reason thereof.

§ 17. Notice

The commissioners at their first meeting after the filing of the petition shall order notice of the time and place of meeting, to consider the petition, to be published once in each of three successive weeks in a newspaper, if any, published in the county; otherwise, in a newspaper published in an adjacent county. They shall also give notice thereof to the clerk of each town where the land lies.

§ 18. Laying out; taking; damages

If, after examination, inspection and a hearing, they find that the improvements prayed for are required by the public convenience and necessity they shall so lay out and establish the same as to do as little injury as practicable, and if it is necessary to take private property for such improvements may take it on behalf of such county under chapter seventy-nine. Any person sustaining damage in his property by the laying out or establishment of such improvements shall be entitled to recover the same under said chapter.

§ 19. Benefits; duty of commissioner to assess

The commissioners shall assess the amount awarded as damages upon the persons for whose use the improvements are to be made, in proportion to the benefit to be received by each; but no person shall be assessed an amount greater than the benefit to be received by him. The provisions of chapter eighty relative to the abatement and collection of betterments shall apply to assessments made under this section.

§ 20. Repairs

If it is necessary to repair an improvement so made, a majority of the persons benefited by it may cause such repairs to be made, and may by bill in equity compel contribution on the basis of the award from the owner of each parcel of land for the use of which the improvement was made.

§ 21. Petition to mayor and aldermen or selectmen

If the land mentioned in section fifteen lies entirely in one town, the petition may be made to the mayor and aldermen or selectmen thereof, who shall proceed thereon in all respects as above provided for county commissioners, except that they need not give notice to their town. Such petition shall be filed in the office of the town clerk before proceedings are had thereon; and the petition with the order thereon shall be recorded in said office within two months after the order has been made.

§ 22. Fees

The mayor and aldermen or selectmen shall each receive two dollars for each day's service upon such petition, and the city or town clerk shall receive for recording a petition or order thereon the fee provided by clause (68) of section thirty-four of chapter two hundred and sixty-two.

Amended by St.1948, c. 550, § 44.

§ 23. Appeal

A party aggrieved by the refusal of the mayor and aldermen or selectmen to make such order, may, within one year thereafter, petition the county commissioners, who shall thereupon proceed in all respects as though the petition had been originally filed with them.

GREENHEAD FLY CONTROL PROJECTS

§ 24. Establishment; proceedings

With the approval of the state reclamation board, hereinafter called the board, any city or town along the seacoast of the commonwealth may, in a city by vote of the city council and in a town by vote of the selectmen, establish a greenhead fly control project within its area, and any two or more adjoining such cities or towns may, by like votes, form a district within their combined areas.

In those areas where district greenhead fly control projects have been formed, the board shall appoint three district commissioners, who shall be sworn to the faithful performance of their duties. The board shall fix the compensation of said commissioners at a sum not to exceed five dollars per day of actual service, and shall allow them actual traveling and other expenses incurred in the performance of their duties. Such compensation and expenses shall be charged to and paid by the district. Any commissioner may be removed by the board for cause and the board may fill vacancies. The certificate of appointment of said commissioners shall be revoked by the board when the objects for which they have been appointed have been accomplished. The duties of the commissioners shall be established by the board.

The votes of said cities and towns to form a district shall be binding for a period of not longer than five years, and any city or town having voted to form a district may withdraw from the district, on any anniversary date of its original vote in paragraph one, by like vote not more than sixty days nor less than ten days prior thereto and notification to the board.

Any city or town may, with the approval of the board, vote as in paragraph one to become a member of an existing district greenhead fly control project.

The city, town or district shall determine the maximum annual amount to be expended in carrying out its individual project, and shall forthwith notify the board of such determination.

In the case of a district greenhead fly control project the maximum annual cost shall be determined by the commissioners, and the board shall determine the proportionate share of such annual cost, which shall be borne by each of the constituent municipalities, apportioned as hereinafter set forth, and shall forthwith notify the treasurer of each member city or town of such determination.

One third of such cost shall be borne by the several municipalities within a district in proportion to the entire salt marsh area contained within their respective boundaries, a similar one third based on the foregoing provision shall be borne by the commonwealth, subject to appropriation, and further subject to the direction and control of the board, and the remaining one third of such cost shall be borne by the several municipalities within the district in proportion to their respective taxable valuations as last established by the general court as a basis of apportionment for state and county taxes. A city or town establishing such a project within its area shall bear the entire cost thereof.

Each of the municipalities comprising such a district shall pay its share of such cost, as so determined, and each city or town establishing such a project shall pay its entire cost, into the state treasury. Any city, town or district may in any year anticipate its liability for such cost, and may raise, appropriate and deposit the amount thereof with the state treasurer, and any sums so deposited shall be credited against its said liability.

Subject to appropriation, there shall annually be expended from the state treasury, under the direction and control of the board, and, where necessary or advisable, in advance of the payment by any city or town of the amount of its liability under the foregoing paragraph, sums not in the excess of the maxima respectively established for said projects, for the elimination or control of the greenhead fly nuisance within the area of each, in accordance with such plans and by means of such methods of control as may be prepared and devised by the board to effect the greatest measure of relief. There may also be disbursed for the furtherance of such a project any other sums voluntarily deposited with the state treasurer by any persons, groups or associations for said project purposes.

Added by St.1948, c. 391, § 1. Amended by St.1954, c. 388, § 1; St.1955, c. 433.

PUBLIC HEALTH

CHAPTER 253

MILLS, DAMS AND RESERVOIRS

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MILLERS

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MILLS AND MILL DAMS

§ 1. Erection

A person may, as hereinafter provided, erect and maintain a water mill and a dam to raise water for working it, upon and across any stream not navigable.

§ 2. Dams; injury to existing mill; prohibition

Such dam shall not be erected to the injury of a mill lawfully existing above or below it on the same stream, nor to the injury of a mill site on the same stream on which a mill or mill dam has been lawfully erected and used, unless the right to maintain a mill on such last mentioned site has been lost by abandonment or otherwise; nor shall a mill dam be erected or raised to the injury of any such mill site which has been occupied as such by the owner thereof, if, within a reasonable time after commencing such occupation, he completes and puts in operation a mill for the working of which the water of such stream is applied; nor shall a mill or dam be placed on the land of any person without such grant, conveyance or authority from the owner as would be necessary to convey land.

§ 3. Height of water

The height to which the water may be raised and the period of time for which it may be kept up in each year may be determined by jury.

§ 4. Overflow or injury to land; action for compensation; limitation; venue

The owner or occupant of land which has been overflowed or otherwise injured by such dam may bring a civil action to obtain compensation therefor. Such action shall be commenced within three years next after the event complained of in the superior court for the county where the land or any part thereof lies; but if the land overflowed or injured is outside the commonwealth such action shall be brought in the superior court for the county where the dam or any part thereof is maintained.

Amended by St.1973, c. 1114, § 298.

§§ 5, 6. Repealed by St.1973, c. 1114, § 299

§ 7. Jury

Such action shall be tried by a jury and, if either party requires it, the jury shall, under the direction of the court, view the land alleged to be injured.

Amended by St.1973, c. 1114, § 300.

§ 8. Assessment of damages

If the jury finds that the plaintiff has suffered the injury complained of, it shall assess the amount of damages sustained within three years last preceding the commencement of the action and to the date of their verdict, taking into consideration any damage caused by the dam to other land of the plaintiff as well as the damage caused thereby to the land overflowed reduced by any benefit caused thereby to the plaintiff's land.

Amended by St.1973, c. 1114, § 300.

§ 9. Height of dam; determination by jury

If it is alleged in the plaintiff's complaint that the dam has been raised to an unreasonable height, or that it ought not to be kept up and closed during the whole year, the jury shall determine by their verdict how much, if at all, the dam shall be lowered and whether it shall be left open, and, if so, during what part of the year.

Amended by St.1973, c. 1114, § 300.

§ 10. Annual and gross damages; assessment by jury

They shall also determine by their verdict what amount, if any, to be paid annually to the plaintiff, would be a just and reasonable compensation for the damages that may be thereafter caused by the dam, so long as it is used in conformity with the verdict; and also what amount in gross would be a just and reasonable compensation for all damages thereafter to be caused by such use of the dam and for the right to maintain and use it forever as aforesaid.

Amended by St.1973, c. 1114, § 301.

§ 11. Plaintiff; right to elect gross amount

The plaintiff may, within three months after the verdict has been recorded elect, by a writing filed in the clerk's office, to take the amount so awarded in gross, instead of such annual compensation.

Amended by St.1973, c. 1114, § 302.

§ 12. Gross amount; time for payment

The owner or occupant of the mill or dam shall, within three months after such election, pay to the plaintiff or secure to his satisfaction said amount with interest from the date of the verdict. After the expiration of said three months, and until payment of said damages and interest, such owner or occupant shall lose all benefit of the provisions of this chapter.

Amended by St.1973, c. 1114, § 303.

§ 13. Annual compensation

If the plaintiff does not file an election, as aforesaid; he and all persons claiming under him shall, so long as the dam is kept up and maintained, be entitled to receive from the owner or occupant of the mill the annual compensation so established by the jury, unless the amount is increased or diminished upon a new petition, as hereinafter provided.

Amended by St.1973, c. 1114, § 304.

§ 14. Damages; lien on mill

The person who is entitled to receive said annual compensation or gross damages shall have a lien therefor, from the time of the commencement of the original action, on the mill and mill dam with their appurtenances and on the land under and adjoining the same and used therewith; but such lien shall not extend to any amount due more than three years before the commencement of an action therefor.

Amended by St.1973, c. 1114, § 305.

§ 15. Recovery of damages; enforcement of lien

Such person may recover, in contract in the superior court from the person who owns or occupies the mill when the action is brought, the whole amount due and unpaid for the three years last preceding, and costs, although the amount recovered is less than one hundred dollars.

§ 16. Sale on execution

The execution issued on such judgment, if not otherwise satisfied, may, within thirty days after judgment, be levied on the land so subject to the lien; and the officer may thereupon sell, in the manner provided for the sale of land on execution, such land or so much thereof as is necessary to satisfy the execution and the expenses of the levy. Such sale shall be valid against any claim which has accrued within the time covered by the lien.

§ 17. Redemption

A person who is entitled to the land so sold may redeem the same within one year after the sale, upon paying to the purchaser or to the person holding under him the amount paid therefor, with interest at the rate of twelve per cent a year.

§ 18. Costs

The party prevailing upon such action shall be entitled to costs, except as otherwise provided.

Amended by St.1973, c. 1114, § 306.

§ 19. Remedies

No action shall be maintained at common law for the recovery of damages for the erection, maintenance or use of a mill or mill dam, if a remedy therefor is provided in this chapter.

§ 20. Existing mills and dams; effect of this chapter

This chapter shall not, except as herein expressly provided, affect the right to keep up, maintain and use any lawfully existing water mill and mill dam; but if the owner or occupant thereof makes any material change by raising the dam or by altering the machinery or the manner of using the water, so as to cause additional damage to the land of another, it shall be considered a new mill or dam, in respect to such additional damage, and the remedy for compensation therefor shall be substantially the same as in the case of a new dam.

§ 21. Reassessment; new action

If either party is dissatisfied with the annual compensation established by proceedings upon a civil action under this chapter or corresponding provisions of earlier laws, a new action may be commenced for the increase or diminution of such compensation or for ascertaining the gross amount of the damages, and the action shall be conducted substantially in the manner provided for an original action; but if a plaintiff has declined to accept gross damages which have been awarded to him, they shall not be again assessed within ten years thereafter.

Amended by St.1973, c. 1114, § 307.

§ 22. Reassessment; parties; time

Such new action may be maintained by and against either of the parties to the original action or by and against a person lawfully holding under either of them, but it shall not be brought until the expiration of one month after the payment of the year last preceding was due.

Amended by St.1973, c. 1114, § 307.

§ 23. Costs; avoidance by offer to pay increased compensation

The owner of the mill or dam may, within said month, offer in writing to the owner of the land any increase of said annual compensation; and if the owner of the land does not agree to accept it, but brings an action to obtain an increase, he shall pay the costs, unless he recovers a greater annual compensation than was so offered.

Amended by St.1973, c. 1114, § 308.

§ 24. Costs; avoidance by offer to accept smaller compensation

The owner of the land may, within said month, offer in writing to the owner of the mill or dam to accept a smaller amount than that established as said annual compensation; and if the owner of the mill or dam does not agree to pay such reduced compensation, but brings an action to obtain a diminution thereof, he shall pay the costs, unless the annual compensation is reduced by the verdict to an amount less than the offer.

Amended by St.1973, c. 1114, § 309.

§ 25. Offer to tenants

Such offers may be made by or to the respective tenants or occupants of the land and of the mill or dam, in like manner and with like effect as if made by or to the respective owners, except that no agreement founded thereon shall bind said owners unless made with their consent.

§ 26. Acceptance of offer; effect

If the offer so made by either party is accepted by the other, it shall establish the annual compensation to be thereafter paid, as if it had been established by a judgment in a civil action, if a memorandum of such offer and acceptance and of the agreement, signed by the respective parties or by persons authorized by them, is filed and recorded in the office of the clerk of the court in which the former judgment was rendered, with a note of reference on the record of the former judgment to the book in which the agreement is recorded.

Amended by St.1973, c. 1114, § 310.

§ 27. Verdict; effect upon action for new damages

If, upon an action by the owner of the land, the jury return a verdict that he is not entitled to any annual compensation, the judgment thereon shall not bar a new action for damages alleged to have arisen after such verdict and for compensation for damages thereafter sustained.

Amended by St.1973, c. 1114, § 311.

§ 28. Tender; effect on costs

In every civil action brought by the owner of land alleged to be injured by a mill dam, the defendant may bring into court and there tender any amount which he considers proper to be paid to the plaintiff for the damages incurred up to the time of such tender, and may also offer to pay any certain annual compensation for the damages which may be thereafter caused by the dam. If the plaintiff does not accept the amount so tendered with his costs to that time, he shall, unless he recovers greater damages or greater annual compensation than was so offered, be entitled to his costs to the time of the tender, and the defendant shall be entitled to his costs after said time.

Amended by St.1973, c. 1114, § 312.

§ 29. Tender; judgment upon acceptance; costs

If the plaintiff accepts the amount so offered for the past damage and for future annual compensation, he shall have judgment therefor and for costs to that time; or the plaintiff may accept either the amount tendered for past damages or the offer for future annual compensation, and proceed to trial on the residue of the complaint under the same liability for costs.

Amended by St.1973, c. 1114, § 312.

§ 30. Action; joinder of parties

Two or more persons who are jointly or separately interested in the land injured may join in a civil action, and the jury may assess joint or several damages as the interest and title of the plaintiffs may require; and judgment and execution shall conform thereto.

Amended by St.1973, c. 1114, § 312.

§ 31. Repealed by St.1973, c. 1114, § 313

§ 32. Reversal of judgment for plaintiff; new action; time limit

If a judgment for the plaintiff is reversed for error, the plaintiff, or any person claiming under him, may commence a new action for the same cause within one year after the reversal of the judgment, and recover all damages sustained during the three years last preceding or at any time after the commencement of the original action.

Amended by St.1973, c. 1114, § 314.

§ 33. Overflowing public ways; petition

If a person who owns, erects or maintains a water mill or a dam to raise water for working such mill upon or across a stream not navigable desires to raise, erect or maintain a dam at such a height or in such a manner as to overflow or otherwise injure an existing public way, he may apply by petition to the commissioner of environmental quality engineering, hereinafter called the commissioner, stating the height at which it is desired to maintain such dam and the ways which may be injured thereby, and asking for the alteration, change of grade or specific repairs of such ways.

Amended by St.1970, c. 595, § 1; St.1975, c. 706, § 299.

§ 34. Notice

Notice of the hearing upon such petition shall be given to the towns where the ways are situated, and to the owners or occupants of the land affected thereby, in like manner as notice of the laying out of highways is given.

§ 35. Change of grade of ways; power of commissioners to order

The commissioner may, after a hearing, order such alteration, repairs or change of grade of such ways as will in his judgment enable the petitioner to raise, erect and maintain such dam without overflowing or otherwise injuring such ways, and they may give written direction and authority to the petitioner to make at his own expense such alterations, changes of grade and repairs within a reasonable time. He shall record all such orders and shall cause certified copies thereof to be filed and recorded in the office of the clerk of each town in which such alterations, changes of grade or repairs are ordered.

Amended by St.1970, c. 595, § 2.

§ 36. Damages; duty of commissioner to assess

The commissioner shall assess and order the petitioner to pay all damages sustained by any person or town by reason of the alterations, changes of grade or repairs ordered by him, and any person or town aggrieved by such assessment may, on application within one year from the entry of such order, have the damages assessed by a jury in the manner provided in chapter seventy-nine.

Amended by St.1970, c. 595, § 2.

§ 37. Costs

The costs of proceedings under the preceding four sections shall be paid by the petitioners, who may be required by the commissioner to give bond with sufficient sureties for the payment thereof.

Amended by St.1970, c. 595, § 2.

§ 38. Order of commissioner; compliance; exoneration from criminal liability

The order of the commissioner, duly issued under section thirty-five, shall authorize the petitioner to do all acts necessary to be done in compliance therewith; and if it is shown that the petitioner has substantially complied with such order, no indictment shall be maintained for the flowage of, or injury to, the ways mentioned in such order, which may be caused by the dam.

Amended by St.1970, c. 595, § 2.

CRANBERRY LAND AND ICE PONDS

§ 39. Dam to flow cranberry land; erection; license

An owner or lessee of land appropriated or which he desires to appropriate to the cultivation and growth of cranberries may erect and maintain a dam upon and across a stream to flow and irrigate said land, subject to this chapter so far as applicable; but he shall not erect and maintain a dam across a navigable stream or across the outlet of a great pond, without a license therefor from the department of public works.

§ 40. Expense; apportionment; appeal

If a dam has been so erected or maintained or if a person has at his own expense made, kept open or repaired any ditches or drains for the improvement or cultivation of such tract of land, any owner or lessee of a like tract, who uses such dam, ditches or drains or who by more remote means receives benefit thereby for the flowing, irrigating or draining of such last mentioned tract, shall pay to the person who has erected or maintained such dam or incurred such expense his proportionate part thereof, which shall be determined by the alderman the city or the selectmen of the town and certified to such owner or lessee. Any person aggrieved by such determination may within three months after notice thereof appeal therefrom to the superior court for the county where the dam, ditches or drains are situated, and shall be entitled to a jury trial; but before taking his appeal he shall give one month's notice, in writing, to the aldermen or selectmen of his intention so to appeal, and shall therein specify particularly his objections to the determination, to which specification he shall be confined upon the hearing by jury. If such owner or lessee fails to pay to the person entitled such proportionate part as finally determined, within said three months if there is no appeal, otherwise within seven days after final determination, he shall pay double the amount so determined with all expenses arising from such failure; and such person may recover the same in contract in his own name. But no covenants or agreements by or between the owners or lessees of such land shall be affected by this section.

§ 41. Ice ponds; erection of dams; consent of owners; damages

An owner or lessee of land used for an ice pond may erect and, between November first and March first, maintain a dam across a stream not navigable, for the purpose of making an ice pond by flowing adjoining land, subject to this chapter so far as applicable, if he annually pays to the owner of land which may be overflowed or injured thereby the amount of the tax which may from time to time be assessed on such land; but such dam shall not be erected without the consent of all of the owners of the land which would be flowed by it, unless the person proposing to erect it shall furnish to such owners as do not consent to the erection security, satisfactory to them or approved by a justice of a court of record or by a master in chancery, for the payment of any damages which may be caused by flowing the land of such owners.

DAMS OF RESERVOIR CORPORATIONS

§ 42. Land flowed; compensation

A domestic reservoir corporation may flow the land of other persons by its reservoir dam, and a person whose land or property has been flowed or injured by such dam, unless compensation has been otherwise made, may obtain compensation therefor as provided in this chapter.

§ 43. Security

The court in which an action for such compensation is pending shall, if requested by the plaintiff, require such corporation to give satisfactory security for the payment of all damages and costs which may be awarded thereon, and if the court finds that the security has become insufficient, it shall require the corporation to give further security. If the corporation neglects for one month or for such further time as the court allows to comply with any such order, it shall lose all rights under this chapter, and the court may restrain it from flowing or injuring such land or property until such security has been given.

Amended by St.1973, c. 1114, § 315.

SAFETY OF RESERVOIRS AND DAMS

§ 44. Definitions

In this section and in sections forty-five to forty-seven, inclusive, the term commissioner shall mean the commissioner of the department of environmental quality engineering or his designee. The term dam, as used in sections forty-five to forty-seven, inclusive, shall mean any artificial barrier, including appurtenant works, which impounds or diverts water, and which (1) is twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation, or (2) has an impounding capacity at maximum water storage elevation of fifty acre-feet or more. As used in this section the term dam shall not mean any barrier which is not in excess of six feet in height, regardless of storage capacity, or which has a storage capacity at maximum water storage elevation not in excess of fifteen acre-feet, regardless of height. Any other dam, the breaching of which could endanger property or safety which is designated by the commissioner under criteria established by regulations promulgated by the commissioner shall be subject to the provisions of sections forty-four to forty-seven, inclusive. Said regulations shall classify dams according to the potential for damage to life or property, taking into consideration factors such as height, type of structure, condition of structure, volume of the impoundment, extent of development downstream and other factors deemed appropriate by the commissioner.

Amended by St.1970, c. 595, § 3; St.1979, c. 722.

§ 45. Construction or alteration; permit

No person shall construct or materially alter a dam without a permit from the commissioner, which permit shall be recorded in the registry of deeds prior to construction. The application for a permit shall be accompanied by plans, specifications and related documents certified by a registered professional civil engineer approved by the commissioner. Construction of the dam shall be performed under the supervision of a registered professional civil engineer retained by the applicant. The commissioner may require said engineer to submit periodic construction reports and as-built drawings, so called, upon completion. If, after investigation of such periodic construction reports, the commissioner determines that construction does not conform to such plans and specifications, the said commissoner may order the discontinuance of the project until such time as he is satisfied that the work shall be performed in accordance with such plans. The engineer shall certify, upon completion of the work, that the dam has been constructed in accordance with the permit.

Amended by St.1970, c. 595, § 3; St.1979, c. 722.

§ 46. Inspection

Every dam shall be inspected visually by the commissioner, according to a schedule established by regulations. After such inspection, the commissioner may order the owner of the dam to cause a thorough examination of the dam, including such tests as the commissioner may require to be made by a registered professional civil engineer, who shall certify as to the condition, adequacy and safety of the dam, within a period of time fixed by the commissioner. The commissioner may make examinations and tests he determines necessary.

Amended by St.1970, c. 595, § 3; St.1979, c. 722.

§ 47. Corrective and emergency actions; enforcement

If the owner fails to certify as to the condition, adequacy or safety of the dam after being ordered to do so by the commissioner, the said commissioner may order said owner to immediately take necessary corrective action, including alteration, repair or removal of the dam or drawing down of the impounded water, to abate a threat to safety and property. If the owner fails to take the action ordered by the commissioner, or if the owner of the dam cannot be determined, the commissioner may take such action as he deems necessary to abate such threat to safety or property. Any emergency action taken by the owner of a dam pursuant to the commissioners order, or any emergency action taken by the commissioner, may be taken without any prior filing with the conservation commission under section forty of chapter one hundred and thirty-one. If water has been drawn off or the structure has been altered pursuant to an order by the commissioner, the impoundment shall not be refilled without approval of the commissioner.

Personnel of the department who are authorized by the commissioner, may enter private property to take action to enforce the provisions of sections forty-four to forty-seven, inclusive. The commissioner may enter into contracts to take actions, draw off water or make temporary repairs without complying with competitive bidding requirements, if such action is necessary to abate a threat to safety or property. The commissioner shall adopt regulations subject to the provisions of chapter thirty A for the enforcement of the provisions of sections forty-four to forty-seven, inclusive.

Amended by St.1970, c. 595, § 3; St.1979, c. 722.

§ 48. Costs

The commissioner shall make such orders as he may deem just as to the payment by the owner, commonwealth or other party of the costs and expenses incurred by them under the preceding three sections, and if the reservoir or dam was adjudged to be unsafe, said costs and expenses may be ordered paid by the owner, with interest, from the time they were paid by the commonwealth. Notice shall be given the state treasurer and the owner or other party of the amount due the commonwealth.

Amended by St.1970, c. 595, § 3.

§ 49. Acts of commissioners; effect on liability of owners

No order, approval, request or advice of the commissioner shall impair the legal duties and obligations of the owners of reservoirs, reservoir dams or mill dams or their liability for the consequences of their illegal acts or of the neglect or mismanagement of their servants or agents.

Amended by St.1970, c. 595, § 3.

§ 50. Jurisdiction

The supreme judicial and the superior courts shall have jurisdiction to enforce the six preceding sections.

Amended by St.1973, c. 1114, § 316.

REPAIRING AND REBUILDING MILLS AND MILL DAMS

§ 51. Power of majority

If a mill which is owned by joint tenants or tenants in common, or the dam or appurtenances of such mill, require repairs or rebuilding in whole or in part, and all the proprietors do not agree to join therein, a majority in interest of the proprietors may cause the work to be done at the expense of the whole in proportion to their respective interests.

§ 52. Meeting of proprietors

One or more of the proprietors may call a meeting by a notice signed by the person or persons who call it, addressed to each of the other proprietors, stating that the mill, dam or appurtenances require repairs or rebuilding and that their attendance is requested at a meeting of the proprietors thereof at the mill at a time named to consult and agree upon the measures to be taken for such purpose.

§ 53. Notice

The notice shall be served by an officer qualified to serve civil process by delivering an attested copy thereof to each proprietor, or by leaving such copy at his last and usual place of abode, not less than seven nor more than thirty days before the day appointed for the meeting, and such officer's return, specifying the persons on whom he has served the notice and the time and manner of the service on each, shall be sufficient evidence thereof.

§ 54. Proceedings

At such meeting, or at any adjournment thereof, the majority in interest of the proprietors of the mill may take measures to cause the mill or the dam or appurtenances thereof to be repaired or rebuilt, as they shall consider most for the interest of all concerned therein.

§ 55. Expense of work; apportionment

Each proprietor shall, upon demand, after the work is completed, pay to the proprietors by whom it has been advanced his just and equal part of the expense of such repair or rebuilding, in proportion to his share or interest in the mill, with interest from the time of the advance.

§ 56. Lien for advancements

The proprietors who advance the money so expended shall have a lien therefor on the rents and profits of the mill and may retain so much thereof as belongs to any proprietor indebted to them for such advance, to be applied to the payment of his debt; or they may maintain an action for the debt or for as much thereof as has not been received from the rents and profits.

§ 57. Guardian; powers

The guardian of a proprietor may act for him in calling or attending a meeting of the proprietors, and may there vote and do all such other acts as the ward could do if competent to act.

§ 58. Tenants and remainderman; apportionment of expenses

If part of the mill is held by a tenant for life or years, the amount due for the repairs and other expenses on that part of the mill shall be apportioned on the tenant for life or years and on the remainderman or reversioner in proportion to the value of their respective interest; and the person to whom the money is due from such remainderman or reversioner shall have a lien on the rents and profits belonging to him after his estate comes into possession, if not sooner paid, notwithstanding any limitation by lapse of time.

§ 59. Mortgagor and mortgagee; apportionment of expenses

A mortgagee in possession shall be considered a proprietor for the purposes of this chapter; but if the action is brought against the mortgagor before his right of redemption has been foreclosed, he shall also be liable for all amounts so due on account of his share of the mill, so far as the same have not been recovered from the mortgagee. All amounts paid on this account by the mortgagee shall be allowed, between him and the mortgagor, as so much paid for repairs or improvements.

§ 60. Tenant in tail

A tenant in tail of a part of a mill shall, for the purposes of this chapter, be considered the proprietor thereof in fee simple.

§ 61. Advancement for repairs; recovery

All amounts due from one or more proprietors to another for money advanced under this chapter may be recovered in a civil action. The amount so recovered shall be apportioned by the court among the plaintiffs, if more than one, according to their respective rights.

Amended by St.1973, c. 1114, § 317.

§ 62. Contracts; effect of this chapter

This chapter shall not affect any contract or agreement by or between the proprietors of a mill as to the repair or rebuilding thereof.

MILLERS

§§ 63, 64. Repealed. St.1931, c. 426, § 39

CHAPTER 258

CLAIMS AND INDEMNITY PROCEDURE FOR THE COMMONWEALTH, ITS MUNICIPALITIES, COUNTIES AND DISTRICTS AND THE OFFICERS AND EMPLOYEES THEREOF

Sec.
1. Definitions.
2. Liability; exclusiveness of remedy; cooperation of public employee; subsequent actions.
3. Venue; jurisdiction.
4. Instituting claims; final denial; limitation of actions.
5. Arbitration, compromise or settlement of claims; subsequent actions.
6. Defense of actions; service of process.
7. Finality of judgments; subsequent actions.
8. Insurance.
9. Indemnity of public employees.
10. Application of sections one to eight.
11. Frivolous claims; costs; subsequent actions.
12. Enforcement of claims.
13. Indemnity of municipal officers.

§ 1. Definitions

As used in this chapter the following words shall have the following meanings:—

"Acting within the scope of his office or employment", acting in the performance of any lawfully ordered military duty, in the case of an officer or soldier of the military forces of the commonwealth.

"Executive officer of a public employer", the secretary of an executive office of the commonwealth, or in the case of an agency not within the executive office, the attorney general; the adjutant general of the military forces of the commonwealth; the county commissioners of a county; the mayor of a city, or as designated by the charter of the city; the selectmen of a town or as designated by the charter of the town; and the board, directors, or committee of a district in the case of the public employers of a district, and, in the case of any other public employer, the nominal chief executive officer or board.

"Public attorney", the attorney who shall defend all civil actions brought against a public employer pursuant to this chapter. In the case of the commonwealth he shall be the attorney general; in the case of any county he shall be the district attorney as designated in sections twelve and thirteen of chapter twelve; in the case of a city or town he shall be the city solicitor or town counsel, or, if the town has no such counsel, an attorney employed for the purpose by the selectmen; in the case of a district he shall be an attorney legally employed by the district for that purpose. A public attorney may also be an attorney furnished by an insurer obligated under the terms of a policy of insurance to defend the public employer against claims brought pursuant thereto.

"Public employee", elected or appointed, officers or employees of any public employer, whether serving full or part-time, temporary or permanent, compensated or uncompensated, and officers or soldiers of the military forces of the commonwealth.

"Public employer", the commonwealth and any county, city, town or district, and any department, office, commission, committee, council, board, division, bureau, institution or agency thereof exercises direction and control over the public employee, but not a private contractor with any such public employer, the Massachusetts Bay Transportation Authority, the Massachusetts Port Authority, the Massachusetts Turnpike Authority, or any other independent body politic and corporate.

Added by St.1978, c. 512, § 15.

§ 2. Liability; exclusiveness of remedy; cooperation of public employee; subsequent actions

Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances, except that public employers shall not be liable to levy of execution on any real and personal property to satisfy judgment, and shall not be liable for interest prior to judgment or for punitive damages or for any amount in excess of one hundred thousand dollars. The remedies provided by this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against the public employer or, the public employee or his estate whose negligent or wrongful act or omission gave rise to such claim, and no such public employee or the estate of such public employee shall be liable for any injury or loss of property or personal injury or death caused by his negligent or wrongful act or omission while acting within the scope of his office or employment; provided, however, that a public employee shall provide reasonable cooperation to the public employer in the defense of any action brought under this chapter. Failure to provide such reasonable cooperation on the part of a public employee shall cause the public employee to be jointly liable with the public employer, to the extent that the failure to provide reasonable cooperation prejudiced the defense of the action. Information obtained from the public employee in providing such reasonable cooperation may not be used as evidence in any disciplinary action against the employee. Final judgment in an action brought against a public employer under this chapter shall constitute a complete bar to any action by a party to such judgment against such public employer or public employee by reason of the same subject matter.

Added by St.1978, c. 512, § 15.

§ 3. Venue; jurisdiction

All civil actions brought against a public employer on a claim for damages cognizable under this chapter shall be brought in the county where the claimant resides or in the county where such public employer is situated, except that in the case of the commonwealth such civil actions shall be brought in the county where the claimant resides or in Suffolk county. The superior court shall have jurisdiction of all civil actions brought against a public employer.

Added by St.1978, c. 512, § 15.

§ 4. Instituting claims; final denial; limitation of actions

A civil action shall not be instituted against a public employer on a claim for damages under this chapter unless the claimant shall have first presented his claim in writing to the executive officer of such public employer within two years after the date upon which the cause of action arose, and such claim shall have been finally denied by such executive officer in writing and sent by certified or registered mail, or as otherwise provided by this section. The failure of the executive officer to deny such claim in writing within six months after the date upon which it is presented, or the failure to reach final arbitration, settlement or compromise of such claim according to the provisions of section five, shall be deemed a final denial of such claim. No civil action shall be brought more than three years after the date upon which such cause of action accrued. Disposition of any claim by the executive officer of a public employer shall not be competent evidence of liability or amount of damages.

The provisions of this section shall not apply to such claims as may be asserted by third-party complaint, cross-claim or counterclaim.

Added by St.1978, c. 512, § 15.

§ 5. Arbitration, compromise or settlement of claims; subsequent actions

The executive officer of a public employer may arbitrate, compromise or settle any claim for damages under this chapter; provided, that any award, compromise or settlement in excess of two thousand five hundred dollars shall be made only with the prior approval of the public attorney for such public employer; provided further, however, that in any case where the public employer is the commonwealth, any award, compromise or settlement in excess of twenty thousand dollars shall be made only with the prior approval of the secretary of administration and finance. The executive officer shall not arbitrate, compromise or settle any such claim before it has been presented to him in writing or after six months have passed from the date upon which such claim was presented to him.

The acceptance by the claimant of any such award, compromise or settlement shall be in writing and shall, except when procured by fraud, be final and conclusive on the claimant, and shall constitute a complete release of any claim against the public employer or against the public employee whose negligent or wrongful act or omission gave rise to such a claim, and a complete bar to any action by the claimant against such public employer or public employee, by reason of the same subject matter.

Added by St.1978, c. 512, § 15.

§ 6. Defense of actions; service of process

The public attorney shall defend all civil actions brought against a public employer pursuant to this chapter. Service of process for such civil action shall be made upon the public attorney or, where no such public attorney has been employed for such purpose at the time service is made, service shall be made upon the executive officer of such public employer.

Added by St.1978, c. 512, § 15.

§ 7. Finality of judgments; subsequent actions

Any award, compromise or settlement of a civil action brought under this chapter in excess of twenty thousand dollars which has been approved by a public attorney for a public employer, or, in the case where the public employer is the commonwealth, approved by the secretary of administration and finance, shall be made final only after approval of same by a judge of the superior court having jurisdiction over the action.

The acceptance by the claimant of any such award, compromise or settlement shall be in writing and shall, except when procured by fraud, be final and conclusive on the claimant, and shall constitute a complete release of any claim against the public employer or against the public employee whose negligent or wrongful act or omission gave rise to such claim, and a complete bar to any action by the claimant against such public employer or public employee, by reason of the same subject matter.

Added by St.1978, c. 512, § 15.

§ 8. Insurance

A public employer may procure insurance for payment of damages incurred pursuant to this chapter.

Added by St.1978, c. 512, § 15.

§ 9. Indemnity of public employees

Public employers may indemnify public employees from personal financial loss and expenses, including legal fees and costs, if any, in an amount not to exceed one million dollars arising out of any claim, action, award, compromise, settlement or judgment by reason of an intentional tort, or by reason of any act or omission which constitutes a violation of the civil rights of any person under any federal or state law; if such employee or official at the time of such intentional tort or such act or omission was acting within the scope of his official duties or employment. No such employee or official shall be indemnified under this section for violation of any such civil rights if he acted in a grossly negligent, willful or malicious manner.

Added by St.1978, c. 512, § 15.

§ 10. Application of sections one to eight

The provisions of sections one to eight, inclusive, shall not apply to:—

(*a*) any claim based upon an act or omission of a public employee when such employee is exercising due care in the execution of any statute or any regulation of a public employer, or any municipal ordinance or by-law, whether or not such statute, regulation, ordinance or by-law is valid;

(*b*) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused;

(*c*) any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations;

(*d*) any claim arising in respect of the assessment or collection of any tax, or the lawful detention of any goods or merchandise by any law enforcement officer.

Added by St.1978, c. 512, § 15.

§ 11. Frivolous claims; costs; subsequent actions

If the judgment in any action brought under this chapter is in favor of the public employer, judgment for costs and execution thereon may issue in favor of the public employer, if the court finds the action brought by the claimant to have been frivolous or in bad faith, and final judgment on the action shall be a bar to any other or further action being brought on the same claim or subject matter.

Added by St.1978, c. 512, § 15.

§ 12. Enforcement of claims

Claims against the commonwealth, except as otherwise expressly provided in this chapter or by any general or special provision of law, may be enforced in the superior court.

Added by St.1979, c. 1, § 1.

§ 13. Indemnity of municipal officers

Any city which accepted section one hundred I of chapter forty-one on or before July twentieth, nineteen hundred and seventy-eight, and any other city which accepts this section according to its charter, and any town which accepts this section in the manner hereinafter provided in this section shall indemnify and save harmless municipal officers, elected or appointed from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission, except an intentional violation of civil rights of any person, if the official at the time of such act or omission was acting within the scope of his official duties or employment.

This act shall be submitted for acceptance to the voters of each town at an annual town meeting in the form of the following question which shall be placed on the official ballot to be used for the election of town officers at said meeting:—"Shall the town vote to accept the provisions of section thirteen of chapter two hundred and fifty-eight of the General Laws which provides that the town shall indemnify and save harmless municipal officers, elected or appointed, from personal financial loss and expense including reasonable legal fees and costs, if any, in an amount not to exceed one million dollars, arising out of any claim, demand, suit or judgment by reason of any act or omission except an intentional violation of civil rights of any person under any law, if the official at the time of such act or omission was acting within the scope of his official duties or employment?" If a majority of the votes in answer to said question is in the affirmative, said provisions shall thereupon take full effect, but not otherwise.

Added by St.1979, c. 396, § 1.

TITLE V

STATUTES OF FRAUDS AND LIMITATIONS

CHAPTER 260

LIMITATION OF ACTIONS

LIMITATION OF PERSONAL ACTIONS

Sec.
2A. Three years; actions of tort, contract to recover for personal injuries and replevin.
3A. Claims against commonwealth.
4. Three years in certain tort or contract actions.

LIMITATION OF PERSONAL ACTIONS

§ 2A. Three years; actions of tort, contract to recover for personal injuries and replevin

Except as otherwise provided, actions of tort, actions of contract to recover for personal injuries, and actions of replevin, shall be commenced only within three years next after the cause of action accrues.

Added by St.1948, c. 274, § 2. Amended by St.1973, c. 777, § 1.

§ 3A. Claims against commonwealth

Petitions founded upon claims against the commonwealth prosecuted under chapter two hundred and fifty-eight shall be brought only within three years next after the cause of action accrues.

Added St.1943, c. 566, § 1.

§ 4. Three years in certain tort or contract actions

Actions of contract or tort for malpractice, error or mistake against physicians, surgeons, dentists, optometrists, hospitals and sanitoria, actions for assault and battery, false imprisonment, slander, libel, actions against sheriffs, deputy sheriffs, constables or assignees in insolvency for the taking or conversion of personal property, actions of tort for injuries to the person against counties, cities and towns, and actions of contract or tort for malpractice, error or mistake against hairdressers, operators and shops registered under sections eighty-seven T to eighty-seven JJ, inclusive, of chapter one hundred and twelve, actions of tort for bodily injuries or for death the payment of judgments in which is required to be secured by chapter ninety and also actions of tort for bodily injuries or for death or for damage to property against officers and employees of the commonwealth, of the metropolitan district commission, and of any county, city or town, arising out of the operation of motor or other vehicles owned by the commonwealth, including those under the control of said commission, or by any such county, city or town, suits by judgment creditors in such actions of tort under section one hundred and thirteen of chapter one hundred and seventy-five and clause (10) [1] of section three of chapter two hundred and fourteen and suits on motor vehicle liability bonds under section thirty-four G of said chapter ninety shall be commenced only within three years next after the cause of action accrues.

For the purposes only of this section, an officer or soldier of the military forces of the commonwealth, as defined in chapter thirty-three, shall while performing any lawfully ordered military duty be deemed to be an officer or employee of the commonwealth.

Amended by St.1933, c. 318, § 5; St.1934, c. 291, § 4; St.1937, c. 385, § 9; St.1943, c. 409, § 4; St.1955, c. 235, § 1; St.1960, c. 271; St.1965, c. 302; St.1968, c. 94, § 1; St.1973, c. 777, § 3.

[1] Now clause (9). See c. 214, § 3, inserted by St.1973, c. 1114, § 62.

PART IV

CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

TITLE I

CRIMES AND PUNISHMENTS

CHAPTER 265

CRIMES AGAINST THE PERSON

Sec.
34. Tattooing body of person by other than qualified physician; punishment.

§ 34. Tattooing body of person by other than qualified physician; punishment

Whoever, not being registered as a qualified physician under section two of chapter one hundred and twelve, or corresponding provisions of earlier laws, marks the body of any person by means of tattooing, shall be punished by a fine of not more than three hundred dollars or by imprisonment for not more than one year, or both.

Added by St.1957, c. 76. Amended by St.1962, c. 214.

CHAPTER 268

CRIMES AGAINST PUBLIC JUSTICE

Sec.
27. Delivering alcoholic beverages to patients of public institutions; possession.

§ 27. Delivering alcoholic beverages to patients of public institutions; possession

Whoever gives, sells or delivers any alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, to any patient or inmate of any public institution, or to any patient or inmate under the control of any such institution, except under the direction of a physician authorized so to do, and whoever has in his possession within the precincts of any such institution any such beverages with intent to consume the same or to convey, give, sell or deliver the same to any patient or inmate thereof, except under direction as aforesaid, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months.

Amended by St.1934, c. 328, § 25.

CHAPTER 268A

CONDUCT OF PUBLIC OFFICIALS AND EMPLOYEES

Sec.

1. Definitions.
2. Corrupt gifts, offers or promises to influence official acts; corruption of witnesses.
3. Gifts, offers or promises for acts performed or to be performed; corruption of witnesses; solicitation of gifts.
4. Other compensation; offer, gift, receipt or request; acting as agent or attorney for other than state; legislators; special state employees.
17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney.
18. Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners.
19. Municipal employees, relatives or associates; financial interest in particular matter.
20. Municipal employees; financial interest in contracts.
21. Municipal agency; unfair advantage in relation to particular matter; additional remedies; civil action for damages.
21A. Members of municipal commission or board; restrictions on appointments to certain positions.
22. Opinions of corporation counsel, city solicitor or town counsel.
23. Supplemental provisions; standards of conduct.

§ 1. Definitions

In this chapter the following words, unless a different meaning is required by the context or is specifically prescribed, shall have the following meanings:—

(a) "Compensation", any money, thing of value or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(b) "Competitive bidding", all bidding, where the same may be prescribed by applicable sections of the General Laws or otherwise, given and tendered to a state, county or municipal agency in response to an open solicitation of bids from the general public by public announcement or public advertising, where the contract is awarded to the lowest responsible bidder.

(c) "County agency", any department or office of county government and any division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

(d) "County employee", a person performing services for or holding an office, position, employment, or membership in a county agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis.

(e) "Immediate family", the employee and his spouse, and their parents, children, brothers and sisters.

(*f*) "Municipal agency", any department or office of a city or town government and any council, division, board, bureau, commission, institution, tribunal or other instrumentality thereof or thereunder.

(*g*) "Municipal employee," a person performing services for or holding an office, position, employment or membership in a municipal agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent, or consultant basis, but excluding (1) elected members of a town meeting and (2) members of a charter commission established under Article LXXXIX of the Amendments to the Constitution.

(*h*) "Official act", any decision or action in a particular matter or in the enactment of legislation.

(*i*) "Official responsibility", the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and whether personal or through subordinates, to approve, disapprove or otherwise direct agency action.

(*j*) "Participate", participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise.

(*k*) "Particular matter", any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court.

(*l*) "Person who has been selected", any person who has been nominated or appointed to be a state, county or municipal employee or has been officially informed that he will be so nominated or appointed.

(*m*) "Special county employee", a county employee who is performing services or holding an office, position, employment or membership for which no compensation is provided; or who is not an elected official and (1) occupies a position which, by it classification in the county agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or (2) in fact does not earn compensation as a county employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special county employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation.

(*n*) "Special municipal employee", a municipal employee who is not a mayor, a member of a board of aldermen, a member of a city council, or a selectman in a town with a population in excess of one thousand persons, and whose position or employment has been expressly classified by the city council, or board of aldermen if there is no city council, or the board of selectmen as that of a special employee under the terms and provisions of this chapter. Such classification shall be made by employing standards reasonably related to the terms and provisions of this chapter and all employees who hold equivalent offices, positions, employment or membership in the same municipal agency shall have the same classification. All employees of any city or town wherein no such classification has been made shall be deemed to be "municipal employees", and shall be subject to all of the provisions of this chapter with respect thereto without exception.

(*o*) "Special state employee", a state employee:

(1) Who is performing services or holding an office, position, employment or membership for which no compensation is provided, or

(2) Who is not an elected official and

(a) occupies a position which, by its classification in the state agency involved or by the terms of the contract or conditions of employment, permits personal or private employment during normal working hours, or

(b) in fact does not earn compensation as a state employee for an aggregate of more than eight hundred hours during the preceding three hundred and sixty-five days. For this purpose compensation by the day shall be considered as equivalent to compensation for seven hours per day. A special state employee shall be in such status on days for which he is not compensated as well as on days on which he earns compensation.

(*p*) "State agency", any department of state government including the executive, legislative or judicial, and all councils thereof and thereunder, and any division, board, bureau, commission, institution, tribunal or other instrumentality within such department, and any independent state authority, district, commission, instrumentality or agency, but not an agency of a county, city or town.

(*q*) "State employee", a person performing services for or holding an office, position, employment, or membership in a state agency, whether by election, appointment, contract of hire or engagement, whether serving with or without compensation, on a full, regular, part-time, intermittent or consultant basis, including members of the general court and executive council. No construction contractor nor any of their personnel shall be deemed to be a state employee or special state employee under the provisions of paragraph (*o*) or this paragraph as a result of participation in the engineering and environmental analysis for major construction projects either as a consultant or part of a consultant group for the commonwealth. Such contractors or personnel may be awarded construction contracts by the commonwealth and may continue with outstanding construction contracts with the commonwealth during the period of such participation; provided, that no such contractor or personnel shall directly or indirectly bid on or be awarded a contract for any construction project if they have participated in the engineering or environmental analysis thereof.

Added by St.1962, c. 779, § 1. Amended by St.1965, c. 351; St.1966, Ex. Sess., c. 734, § 2; St.1969, c. 350, §§ 1, 2; St.1977, c. 245.

§ 2. Corrupt gifts, offers or promises to influence official acts; corruption of witnesses

(*a*) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any state, county or municipal employee, or to any person who has been selected to be such an employee, or to any member of the judiciary, or who offers or promises any such employee or any member of the judiciary, or any person who has been selected to be such an employee or member of the judiciary, to give anything of value to any other person or entity, with intent

(1) to influence any official act or any act within the official responsibility of such employee or member of the judiciary or person who has been selected to be such employee or member of the judiciary, or

(2) to influence such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary, to commit or aid in committing, or collude in, or allow, any fraud, or make opportunity for the commission of any fraud on the commonwealth or a state, county or municipal agency, or

(3) to induce such an employee or member of the judiciary or person who has been selected to be such an employee or member of the judiciary to do or omit to do any act in violation of his lawful duty; or

(*b*) Whoever, being a state, county or municipal employee or a member of the judiciary or a person selected to be such an employee or member of the judiciary, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity, in return for

(1) being influenced in his performance of any official act or any act within his official responsibility, or

(2) being influenced to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud, on the commonwealth or on a state, county or municipal agency, or

(3) being induced to do or omit to do any acts in violation of his official duty; or

(*c*) Whoever, directly or indirectly, corruptly gives, offers or promises anything of value to any person, or offers or promises such person to give anything of value to any other person or entity, with intent to influence the testimony under oath or affirmation of such first-mentioned person or any other person as a witness upon a trial, or other proceeding, before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony, or with intent to influence such witness to absent himself therefrom; or

(*d*) Whoever, directly or indirectly, corruptly asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value for himself or for any other person or entity in return for influence upon the testimony under oath or affirmation of himself or any other person as a witness upon any such trial, hearing or other proceeding or in return for the absence of himself or any other person therefrom;—shall be punished by a fine of not more than five thousand dollars or by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one half years, or by both such fine and imprisonment in a jail or house of correction; and in the event of final conviction shall be incapable of holding any office of honor, trust or profit under the commonwealth or under any state, county or municipal agency.

Clauses (*c*) and (*d*) shall not be construed to prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

Added by St.1962, c. 779, § 1. Amended by St.1964, c. 287.

§ 3. Gifts, offers or promises for acts performed or to be performed; corruption of witnesses; solicitation of gifts

(*a*) Whoever otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, gives, offers or promises anything of substantial value to any present or former state, county or municipal employee or to any member of the judiciary, or to any person selected to be such an employee or member of the judiciary, for or because of any official act performed or to be performed by such an employee or member of the judiciary or person selected to be such an employee or member of the judiciary; or

(*b*) Whoever, being a present or former state, county or municipal employee or member of the judiciary, or person selected to be such an employee or member of the judiciary, otherwise than as provided by law for the proper discharge of official duty, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of any official act or act within his official responsibility performed or to be performed by him; or

(*c*) Whoever, directly or indirectly, gives, offers or promises anything of substantial value to any person, for or because of testimony under oath or affirmation given or to be given by such person or any other person as a witness upon a trial, hearing or other proceeding, before any court, any committee of either house or both houses of the general court, or any agency, commission or officer authorized by the laws of the commonwealth to hear evidence or take testimony or for or because of his absence therefrom; or

(*d*) Whoever, directly or indirectly, asks, demands exacts, solicits, seeks, accepts, receives or agrees to receive anything of substantial value for himself for or because of the testimony under oath or affirmation given or to be given by him or any other person as a witness upon any such trial, hearing or other proceeding, or for or because of his absence therefrom:—shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

Clauses (*c*) and (*d*) shall not be construed to prohibit the payment or receipt of witness fees provided by law or the payment by the party upon whose behalf a witness is called and receipt by a witness of the reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such trial, hearing or proceeding, or, in the case of expert witnesses, involving a technical or professional opinion, a reasonable fee for time spent in the preparation of such opinion, in appearing or testifying.

Added by St.1962, c. 779, § 1.

§ 4. Other compensation; offer, gift, receipt or request; acting as agent or attorney for other than state; legislators; special state employees

(*a*) No state employee shall otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the commonwealth or a state agency, in relation to any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

(*b*) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(*c*) No state employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the commonwealth or a state agency for prosecuting any claim against the commonwealth or a state agency, or as agent or attorney for anyone in connection with any particular matter in which the commonwealth or a state agency is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

A member of the general court shall not be subject to paragraphs (*a*) or (*c*). However, no member of the general court shall personally appear for any compensation other than his legislative salary before any state agency, unless:

(1) the particular matter before the state agency is ministerial in nature; or

(2) the appearance is before a court of the commonwealth; or

(3) the appearance is in a quasi-judicial proceeding.

For the purposes of this paragraph, ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents. For the purposes of this paragraph, a proceeding shall be considered quasi-judicial if:

(1) the action of the state agency is adjudicatory in nature; and

(2) the action of the state agency is appealable to the courts; and

(3) both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting the proceeding.

A special state employee shall be subject to paragraphs (*a*) and (*c*) only in relation to a particular matter (*a*) in which he has at any time participated as a state employee, or (*b*) which is or within one year has been a subject of his official responsibility, or (*c*) which is pending in the state agency in which he is serving. Clause (*c*) of the preceding sentence shall not apply in the case of a special state employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a state employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a state employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the state official responsible for appointment to his position approves.

This section shall not prevent a present or former special state employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the commonwealth; provided, that the head of the special state employee's department or agency has certified in writing that the interest of the commonwealth requires such aid or assistance and the certification has been filed with the state ethics commission.

This section shall not prevent a state employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

Added by St.1962, c. 779, § 1. Amended by St.1978, c. 210, §§ 4, 5.

§ 17. Municipal employees; gift or receipt of compensation from other than municipality; acting as agent or attorney

(*a*) No municipal employee shall, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest.

(*b*) No person shall knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly give, promise or offer such compensation.

(*c*) No municipal employee shall, otherwise than in the proper discharge of his official duties, act as agent or attorney for anyone other than the city or town or municipal agency in prosecuting any claim against the same city or town, or as agent or attorney for anyone in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest.

Whoever violates any provision of this section shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

A special municipal employee shall be subject to paragraphs (*a*) and (*c*) only in relation to a particular matter (*a*) in which he has at any time participated as a municipal employee, or (*b*) which is or within one year has been a subject of his official responsibility, or (*c*) which is pending in the municipal agency in which he is serving. Clause (*c*) of the preceding sentence shall not apply in the case of a special municipal employee who serves on no more than sixty days during any period of three hundred and sixty-five consecutive days.

This section shall not prevent a municipal employee from taking uncompensated action, not inconsistent with the faithful performance of his duties, to aid or assist any person who is the subject of disciplinary or other personnel administration proceedings with respect to those proceedings.

This section shall not prevent a municipal employee, including a special employee, from acting, with or without compensation, as agent or attorney for or otherwise aiding or assisting members of his immediate family or any person for whom he is serving as guardian, executor, administrator, trustee or other personal fiduciary except in those matters in which he has participated or which are the subject of his official responsibility; provided, that the official responsible for appointment to his position approves.

This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

This section shall not prevent a municipal employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

Added by St.1962, c. 779, § 1.

§ 18. Former municipal employee; acting as attorney or receiving compensation; from other than municipality; partners

(*a*) A former municipal employee who knowingly acts as agent or attorney for or receives compensation, directly or indirectly from anyone other than the same city or town in connection with any particular matter in which the city or town is a party or has a direct and substantial interest and in which he participated as a municipal employee while so employed, or (*b*) a former municipal employee who, within one year after his last employment has ceased, appears personally before any agency of the city or town as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and which was under his official responsibility as a municipal employee at any time within a period of two years prior to the termination of his employment, or (*c*) a partner of a former municipal employee who knowingly engages, during a period of one year following the termination of the latter's employment by the city or town, in any activity in which the former municipal employee is himself prohibited from engaging by clause (*a*), or (*d*) a partner of a municipal employee who knowingly acts as agent or attorney for anyone other than the city or town in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which the municipal employee participates or has participated as a municipal employee or which is the subject of his official responsibility, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

If a partner of a former municipal employee or of a special municipal employee is also a member of another partnership in which the former or special employee has no interest, the activities of the latter partnership in which the former or special employee takes no part shall not thereby be subject to clause (*c*) or (*d*).

Notwithstanding the provisions of clause (*b*), a former town counsel who acted in such capacity on a salary or retainer of less than two thousand dollars per year shall be prohibited from appearing personally before any agency of the city or town as agent or attorney for anyone other than the city or town only in connection with any particular matter in which the same city or town is a party or has a direct and substantial interest and in which he participated while so employed. This section shall not prevent a present or former special municipal employee from aiding or assisting another person for compensation in the performance of work under a contract with or for the benefit of the city or town; provided, that the head of the special municipal employee's department or agency has certified in writing that the interest of the city or town requires such aid or assistance and the certification has been filed with the clerk of the city or town. The certification shall be open to public inspection.

Added by St.1962, c. 779, § 1.

§ 19. Municipal employees, relatives or associates; financial interest in particular matter

(*a*) Except as permitted by paragraph (*b*), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

(*b*) It shall not be a violation of this section (1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or (2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files, with the clerk of the city or town, a statement making full disclosure of such financial interest, or (3) if, by statute, the financial interest has been exempted from the requirements of clause (1) as being too remote or too inconsequential to affect the integrity of municipal employees' services.

Added by St.1962, c. 779, § 1. Amended by St.1965, c. 395.

§ 20. Municipal employees; financial interest in contracts

(*a*) A municipal employee who has a financial interest, directly or indirectly, in a contract made by a municipal agency of the same city or town, in which the city or town is an interested party of which financial interest he has knowledge or has reason to know, shall be punished by a fine of not more than three thousand dollars or by imprisonment for not more than two years, or both.

This section shall not apply if such financial interest consists of the ownership of less than one per cent of the stock of a corporation.

This section shall not apply (*a*) to a municipal employee who in good faith and within thirty days after he learns of an actual or prospective violation of this section makes full disclosure of his financial interest to the contracting agency and terminates or disposes of the interest, or (*b*) to a municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency, if the contract is made through competitive bidding and his direct and indirect interests and those of his immediate family in the corporation or other commercial entity with which the contract is made do not in the aggregate amount to ten per cent of the total proprietary interests therein, or (*c*) to a special municipal employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, or (*d*) to a special municipal employee who files with the clerk of the city or town a statement making full disclosure of his interest and the interests of his immediate family in the contract, if the city council or board of aldermen if there is no city council or the board of selectmen approve the exemption of his interest from this section, or (*e*) to a municipal employee who receives benefits from programs funded by the United States or any other source in connection with the improvement or rehabilitation of his residence to the extent permitted by the funding agency.

Added by St.1962, c. 779, § 1. Amended by St.1979, c. 135.

§ 21. Municipal agency; unfair advantage in relation to particular matter; additional remedies; civil action for damages

(*a*) In addition to any other remedies provided by law, any violation of sections two, three, eight, or sections fifteen to twenty, inclusive, which has substantially influenced the action taken by any municipal agency in any particular matter shall be grounds for avoiding, rescinding or cancelling the action on such terms as the interest of the municipality and innocent third persons require.

(*b*) The city or town may bring a civil action against any person who has acted to his economic advantage in violation of said sections two, three, eight and fifteen to twenty, inclusive, and may recover damages in the amount of such economic advantage or five hundred dollars, whichever is greater. If there has been no final criminal judgment of conviction or acquittal of the same violation, the city or town may in the discretion of the court recover additional damages in an amount not exceeding twice the amount of the economic advantage or five hundred dollars, whichever is greater, and a judgment for such damages shall bar any criminal prosecution for the same violation.

Added by St.1962, c. 779, § 1.

§ 21A. Members of municipal commission or board; restrictions on appointments to certain positions

Except as hereinafter provided, no member of a municipal commission or board shall be eligible for appointment or election by the members of such commission or board to any office or position under the supervision of such commission or board. No former member of such commission or board shall be so eligible until the expiration of thirty days from the termination of his service as a member of such commission or board.

The provisions of this section shall not apply to a member of a town commission or board, if such appointment or election has first been approved at an annual town meeting of the town.

Added by St.1967, c. 887, § 2.

§ 22. Opinions of corporation counsel, city solicitor or town counsel

Any municipal employee shall be entitled to the opinion of the corporation counsel, city solicitor or town counsel upon any question arising under this chapter relating to the duties, responsibilities and interests of such employee. All requests for such opinions by a subordinate municipal employee shall be made in confidence directly to the chief officer of the municipal agency in which he is employed, who shall in turn request in confidence such opinion of the corporation counsel, city solicitor or town counsel on behalf of such subordinate municipal employee, and all constitutional officers and chief officers or heads of municipal agencies may make direct confidential requests for such opinions on their own account. The town counsel or city solicitor shall file such opinion in writing with the city or town clerk and such opinion shall be a matter of public record; however, no opinion will be rendered by the town counsel or city solicitor except upon the submission of detailed existing facts which raise a question of actual or prospective violation of any provision of this chapter.

Added by St.1962, c. 779, § 1. Amended by St.1964, c. 408.

§ 23. Supplemental provisions; standards of conduct

In addition to the other provisions of this chapter, and in supplement thereto, the following are established as standards of conduct for all state, county and municipal employees for the violation of which appropriate administrative action as is warranted may be taken by the appropriate constitutional officer or by the head of a state, county or municipal agency. No officer or employee of a state, county or municipal agency shall:

(*a*) accept other employment which will impair his independence of judgment in the exercise of his official duties.

(*b*) accept employment or engage in any business or professional activity which will require him to disclose confidential information which he has gained by reason of his official position or authority.

(*c*) improperly disclose confidential information acquired by him in the course of his official duties nor use such information to further his personal interests.

(*d*) use or attempt to use his official position to secure unwarranted privileges or exemptions for himself or others.

(*e*) by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship, rank, position or influence of any party or person.

(*f*) pursue a course of conduct which will raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust.

Added by St.1962, c. 779, § 1. Amended by St.1975, c. 508.

CHAPTER 268B

FINANCIAL DISCLOSURE BY CERTAIN PUBLIC OFFICIALS AND EMPLOYEES

Sec.

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7. Penalties for violation of confidentiality and for perjury.

§ 1. Definitions

Definitions.

As used in this chapter, unless the context requires otherwise,

(*a*) "amount" means a category of value, rather than an exact dollar figure, as follows: greater than $1000 but not more than $2500; greater than $2500 but not more than $5000; greater than $5000 but not more than $10,000; greater than $10,000 but not more than $25,000; greater than $25,000 but not more than $50,000; greater than $50,000 but not more than $100,000; greater than $100,000.

(*b*) "business" means any corporation, partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock company, receivership, business or real estate trust, or any other legal entity organized for profit or charitable purposes;

(*c*) "business with which he is associated" means any business in which the reporting person or a member of his immediate family is a general partner, proprietor, officer or other employee, including one who is self-employed, or serves as a director, trustee or in any similar managerial capacity; and any business more than one percent of any class of the outstanding equity of which is beneficially owned in the aggregate by the reporting person and members of his immediate family;

(*d*) "candidate for public office" means any individual who seeks nomination or election to public office, as defined by this chapter.

For the purposes of this chapter, an individual shall be deemed to be seeking nomination or election to public office if he has (1) received a political contribution or made an expenditure, or has given his consent for any other person or committee to receive a political contribution or make an expenditure, for the purpose of influencing his nomination or election to such office, whether or not the specific public office for which he will seek nomination or election is known at the time the political contribution is received or the expenditure is made, or (2) taken the action necessary under the laws of the commonwealth to qualify himself for nomination or election to such office;

(*e*) "commission" means the state ethics commission established by section 2;

(*f*) "equity" means any stock or similar ownership interest in a business;

(*g*) "gift" means a payment, entertainment, subscription, advance, services or anything of value, unless consideration of equal or greater value is received; "gift" shall not include a political contribution reported as required by law, a commercially reasonable loan made in the ordinary course of business, anything of value received by inheritance, or a gift received from a member of the reporting person's immediate family or from a relative within the third degree of consanguinity of the reporting person or of the reporting person's spouse or from the spouse of any such relative;

(*h*) "governmental body" means any state or county agency, authority, board, bureau, commission, council, department, division, or other entity, including the general court and the courts of the commonwealth;

(*i*) "immediate family" means a spouse and any dependent children residing in the reporting person's household;

(*j*) "income" means income from whatever source derived, whether in the form of a fee, salary, allowance, forebearance, forgiveness, interest, dividend, royalty, rent, capital gain, or any other form of recompense or any combination thereof; provided, however, that interest from savings accounts or from government obligations other than those of the commonwealth or any public agency or authority created by the general court, alimony and support payments, proceeds from a life insurance policy, retirement or disability benefits, and social security payments shall not be considered income for the purposes of this chapter;

(*k*) "legislative agent" means any person who for compensation or reward does any act to promote, oppose or influence legislation, or to promote, oppose or influence the governor's approval or veto thereof or to influence the decision of any member of the executive branch where such decision concerns legislation or the adoption, defeat, or postponement of a standard, rate, rule or regulation pursuant thereto. The term shall include persons who, as any part of their regular and usual employment and not simply incidental thereto, attempt to promote, oppose or influence legislation or the governor's approval or veto thereof, whether or not any compensation in addition to the salary for such employment is received for such services;

(*l*) "Major policy making position" means: the executive or administrative head or heads of a governmental body; all members of the judiciary; any person whose salary equals or exceeds that of a state employee classified in step one of job group XXV of the general salary schedule contained in section forty-six of chapter thirty and who reports directly to said executive or administrative head; the head of each division, bureau, or other major administrative unit within such governmental body; and persons exercising similar authority;

(*m*) "person" means a business, individual, corporation, union, association, firm, partnership, committee, or other organization or group of persons;

(*n*) "political contribution" means a contribution of money or anything of value to an individual, candidate, political committee, or person acting on behalf of an individual, candidate or political committee, for the purpose of influencing the nomination or election of said individual or candidate, or for the purpose of promoting or opposing a charter change, referendum question, constitutional amendment, or other question submitted to the voters, and shall include any: (1) gift, subscription, loan, advance, deposit of money, or thing of value, except a loan of money to a candidate by a national or state bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business; (2) transfer of money or anything of value between political committees; (3) payment, by any person other than a candidate or political committee, or compensation for the personal services of another person which are rendered to such candidate or committee; (4) purchase from an individual, candidate or political committee, or person acting on behalf of an individual, candidate or political committee, whether through the device of tickets, advertisements, or otherwise, for fund-raising activities, including testimonials, held on behalf of said individual, candidate, or political committee, to the extent that the purchase price exceeds the actual cost of the goods sold or services rendered; (5) discount or rebate not available to other candidates for the same office and to the general public; and (6) forgiveness of indebtedness or payment of indebtedness by another person; but shall not include the rendering of services by speakers, editors, writers, poll watchers, poll checkers or others, nor the payment by those rendering such services of such personal expenses as may be incidental thereto, nor the exercise of ordinary hospitality;

(*o*) "Public employee" means any person who holds a major policymaking position in a governmental body; provided, however, that any person who receives no compensation other than reimbursements for expenses, or any person serving on a governmental body that has no authority to expend public funds other than to approve reimbursements for expenses shall not be considered a public employee for the purposes of this chapter;

(*p*) "public office" means any position for which one is nominated at a state primary or chosen at a state election, excluding the positions of Senator and Representative in congress;

(*q*) "public official" means anyone who holds a public office, as defined by clause (*p*) of this section;

(*r*) "reporting person" means any person required to file a statement of financial interest pursuant to the provisions of section 5 of this chapter.

Added by St.1978, c. 210, § 20.

§ 2. State ethics commission

State ethics commission.

(*a*) There is established a state ethics commission composed of five members. At no time shall more than three members be from the same political party.

(*b*) Three members of the commission shall be appointed by the governor, one of whom shall be designated as chairman, and one member shall be appointed by the state secretary and one member shall be appointed by the attorney general. At no time shall more than two of the members to be appointed by the governor be from the same political party.

(*c*) Members of the commission shall serve for terms of five years.

(*d*) No person shall be appointed to more than one full five year term on the commission.

(*e*) Not less than thirty days prior to making any appointment to the commission, the appointing official shall give public notice that a vacancy on the commission exists.

(*f*) No member or employee of the commission shall:

(1) hold or be a candidate for any other public office while a member or employee or for one year thereafter;

(2) hold office in any political party or political committee;

(3) participate in or contribute to the political campaign of any candidate for public office.

(*g*) Members of the commission may be removed by a majority vote of the governor, state secretary, and attorney general, for substantial neglect of duty, inability to discharge the powers and duties of office, violation of subsection (*f*) of this section, gross misconduct, or conviction of a felony.

(*h*) Any vacancy occurring on the commission shall be filled within ninety days by the original appointing authority. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member he succeeds, and shall be eligible for appointment to one full five year term.

(*i*) The commission shall elect a vice chairman. The vice chairman shall act as chairman in the absence of the chairman or in the event of a vacancy in that position.

(*j*) Three members of the commission shall constitute a quorum and three affirmative votes shall be required for any action or recommendation of the commission; the chairman or any three members of the commission may call a meeting; advance notice of all meetings shall be given to each member of the commission and to any other person who requests such notice;

(*k*) Members of the commission shall be compensated for work performed for the commission at such rate as the secretary of administration and finance shall determine, and shall be reimbursed for their expenses.

(*l*) The commission shall annually report to the general court and the governor concerning the action it has taken; the names and salaries and duties of all individuals in its employ and the money it has disbursed; and shall make such further reports on matters within its jurisdiction as may appear necessary;

(*m*) The commission shall employ an executive director, a general counsel, and, subject to appropriation, such other staff, including but not limited to clerks, accountants, and investigators, as are necessary to carry out its duties pursuant to this chapter and chapter 268A. The staff shall serve at the pleasure of the commission and shall not be subject to the provisions of chapter 31 or section 9A of chapter 30. The executive director shall be responsible for the administrative operation of the commission and shall perform such other tasks as the commission shall determine. The general counsel shall be the chief legal officer of the commission. The commission may employ, subject to appropriation, the services of experts and consultants necessary to carry out its duties. The commissioner of public safety, the state auditor, the comptroller, the attorney general, and the director of the office of campaign and political finance may make available to the commission personnel and other assistance as the commission may request.

Added by St.1978, c. 210, § 20.

§ 3. Powers and duties of commission

Powers and duties of the commission.

The commission shall:

(*a*) prescribe and publish, pursuant to the provisions of chapter 30A, rules and regulations to carry out the purposes of this chapter, including rules governing the conduct of proceedings hereunder;

(*b*) prepare and publish, after giving the public an opportunity to comment, forms for the statements and reports required to be filed by this chapter and make such forms available to any and all persons required to file statements and reports pursuant to the provisions of this chapter;

(*c*) prepare and publish, pursuant to the provisions of chapter 30A, methods of accounting and reporting to be used by persons required to file statements and reports by this chapter;

(*d*) make statements and reports filed with the commission available upon the written request of any individual for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost; the commission shall forward a copy of said request to the individual whose statement has been examined;

(*e*) compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(*f*) inspect all statements of financial interests filed with the commission in order to ascertain whether any reporting person has failed to file such a statement or has filed a deficient statement. If, upon inspection, it is ascertained that a reporting person has failed to file a statement of financial interests, or if it is ascertained that any such statement filed with the commission fails to conform with the requirements of section five of this chapter, then the commission shall, in writing, notify the delinquent; such notice shall state in detail the deficiency and the penalties for failure to file a statement of financial interests;

(*g*) upon written request from a person who is or may be subject to the provisions of this chapter or chapter 268A, render advisory opinions on the requirements of said chapters. An opinion rendered by the commission, until and unless amended or revoked, shall be a defense in a criminal action brought under chapter 268A and shall be binding on the commission in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; provided, however, that the commission may publish such opinions, but the name of the requesting person and any other identifying information shall not be included in such publication unless the requesting person consents to such inclusion;

(*h*) preserve all statements and reports filed with the commission for a period of six years from the date of receipt;

(*i*) act as the primary civil enforcement agency for violations of chapter 268A, as specified in sections 9 and 15 of that chapter, and of this chapter;

(*j*) on or before February first of each year the executive director of the commission shall request a list of all major policy-making positions for the governmental bodies below from the persons listed below:

(1) the house of representatives, the speaker of the house;

(2) the senate, the president of the senate;

(3) the state secretary's office, the state secretary;

(4) the attorney general's office, the attorney general;

(5) the state auditor's office, the state auditor;

(6) the treasurer and receiver general's office, the state treasurer;

(7) for each court of the commonwealth, the chief judge of such court;

(8) for each executive office in the commonwealth and all governmental bodies within such executive office, the secretary for such executive office;

(9) the governor's office, the governor;

(10) the lieutenant governor's office, the lieutenant governor;

(11) for each county, the chairman of the county commissioners;

(12) for each authority or other governmental body not covered by clauses one through eleven above, the executive or administrative head of such authority or governmental body;

and such persons shall furnish such lists within sixty days. The executive director may add any position that he determines to be a major policy making position in such governmental body to such list. Any person aggrieved by such action of the executive director may appeal such action to the commission.

Added by St.1978, c. 210, § 20.

§ 4. Investigations by the commission

Investigations by the commission.

(*a*) Upon receipt of a sworn complaint signed under pains and penalties of perjury, or upon receipt of evidence which is deemed sufficient by the commission, the commission shall initiate a preliminary inquiry into any alleged violation of chapter 268A or this chapter. At the beginning of a preliminary inquiry into any alleged violation of chapter 268A or this chapter, the general counsel shall notify the attorney general of such action. All commission proceedings and records relating to a preliminary inquiry shall be confidential, except that the general counsel may turn over to the attorney general evidence which may be used in a criminal proceeding. The general counsel shall notify any person who is the subject of the preliminary inquiry of the existence of such inquiry and the general nature of the alleged violation within thirty days of the commencement of the inquiry.

(*b*) If a preliminary inquiry fails to indicate reasonable cause for belief that this chapter or chapter 268A has been violated, the commission shall immediately terminate the inquiry and so notify, in writing, the complainant, if any, and the person who had been the subject of the inquiry. All commission records and proceedings from such an inquiry shall remain confidential.

(*c*) If a preliminary inquiry indicates reasonable cause for belief that this chapter or chapter 268A has been violated, the commission may, upon a majority vote, initiate a full investigation and appropriate proceedings to determine whether there has been such a violation.

The commission may require by summons the attendance and testimony of witnesses and the production of books, papers and other records relating to any matter being investigated by it pursuant to this chapter or chapter 268A. Such a summons may be issued by the commission only upon a majority vote of the commission and shall be served in the same manner as summonses for witnesses in civil cases, and all provisions of law relative to summonses issued in such cases, including the compensation of witnesses, shall apply to summonses issued by the commission. Any justice of the superior court may, upon application by the commission, in his discretion issue an order requiring the attendance of witnesses summoned as aforesaid and the giving of testimony or the production of books, papers and other records before the commission in furtherance of any investigation pursuant to the provisions of this chapter or chapter 268A.

Any member of the commission may administer oaths and any member of the commission may hear testimony or receive other evidence in any proceeding before the commission.

All testimony in commission proceedings shall be under oath. All parties shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses shall be given a copy of the regulations governing commission proceedings. All witnesses shall be entitled to be represented by counsel.

Any person whose name is mentioned during a proceeding of the commission and who may be adversely affected thereby may appear personally before the commission on his own behalf or file a written statement for incorporation into the record of the proceeding.

All proceedings of the commission carried out pursuant to the provisions of this subsection shall be public, unless the members vote to go into executive session.

Within thirty days after the end of proceedings pursuant to the provisions of this subsection, the commission shall meet in executive session for the purpose of reviewing the evidence before it. Within thirty days after completion of deliberations, the commission shall publish a written report of its findings and conclusions.

(*d*) The commission, upon a finding pursuant to the provisions of the preceding subsection that there has been a violation of chapter 268A or a violation of this chapter, may issue an order requiring the violator to:

(1) cease and desist such violation of chapter 268A or this chapter;

(2) file any report, statement or other information as required by chapter 268A or this chapter; or

(3) pay a civil penalty of not more than $1000 for each violation of this chapter or chapter 268A.

The commission may file a civil action in superior court to enforce such an order.

(*e*) Any final action by the commission made pursuant to this chapter shall be subject to review in superior court upon petition of any interested person filed within thirty days after the action for which review is sought. The court shall enter a judgment enforcing, modifying or setting aside the order of the commission or it may remand the proceeding to the commission for such further action as the court may direct.

Added by St.1978, c. 210, § 20.

§ 5. Statements of financial interests

Statements of financial interests.

(*a*) Every candidate for public office shall file a statement of financial interest for the preceding calendar year with the commission on or before the date on which a certificate of nomination or nomination papers for such candidate are submitted to the state secretary.

(*b*) Every public official shall file a statement of financial interests for the preceding calendar year with the commission on or before the last Tuesday in May of each year that such public official holds such office and on or before May first of the year after such public official leaves such office; provided, however, that no public official shall be required to file a statement of financial interests for any year in which he held public office for less than eight days.

(*c*) Every public employee shall file a statement of financial interests for the preceding calendar year with the commission within ten days after becoming a public employee, on or before May first of each year thereafter that such person is a public employee and on or before May first of the year after such person ceases to be a public employee; provided, however, that no public employee shall be required to file a statement of financial interests for any year in which he was a public employee for less than eight days.

(*d*) The commission shall, upon receipt of a statement of financial interests pursuant to the provisions of this section, issue to the person filing such statement a receipt verifying the fact that a statement of financial interests has been filed and a receipted copy of such statement.

(*e*) No public employee shall be allowed to continue in his duties or to receive compensation from public funds unless he has filed a statement of financial interests with the commission as required by this chapter.

(*f*) The statement of financial interests filed pursuant to the provisions of this section shall be on a form prescribed by the commission and shall be signed under penalty of perjury by the reporting person.

(*g*) Reporting persons shall disclose, to the best of their knowledge, the following information for the preceding calendar year, or as of the last day of said year with respect to the information required by clauses 2, 3, and 6 below; such persons shall also disclose the same information with respect to their immediate family provided, however, that no amount need be given for such information with regard to the reporting person's immediate family:

(1) the name and address of, the nature of association with, the share of equity in, if applicable, and the amount of income if greater than one thousand dollars derived from each business with which he is associated;

(2) the identity of all securities and other investments with a fair market value of greater than one thousand dollars which were beneficially owned, not otherwise reportable hereunder; and the

amount of income if over one thousand dollars from any such security which is issued by the commonwealth or any political subdivision thereof or any public agency or authority created by the general court;

(3) the name and address of each creditor to whom more than one thousand dollars was owed and the original amount, the amount outstanding, the terms of repayment, and the general nature of the security pledged for each such obligation except that the original amount and the amount outstanding need not be reported for a mortgage on the reporting person's primary residence; provided, however, that obligations arising out of retail installment transactions, educational loans, medical and dental expenses, debts incurred in the ordinary course of business, and any obligation to make alimony or support payments, shall not be reported; and provided, further, that such information need not be reported if the creditor is a relative of the reporting person within the third degree of consanguinity or affinity;

(4) the name and address of the source, and the cash value of any reimbursement for expenses aggregating more than one hundred dollars in the calendar year if the source of such reimbursement is a legislative agent; or if the recipient is a public official and the source of such reimbursement is a person having a direct interest in legislation, legislative action, or a matter before a governmental body; or if the recipient is a public employee and the source of such reimbursement is person having a direct interest in a matter before the governmental body by which the recipient is employed;

(5) the name and address of the doner, and the fair market value, if determinable, of any gifts aggregating more than one hundred dollars in the calendar year, if the recipient is a public official and the source of such gift(s) is a person having a direct interest in legislation, legislative action, or a matter before a governmental body; or if the recipient is a public employee and the source of such gift(s) is a person having a direct interest in a matter before the governmental body by which the recipient is employed;

(6) the description, as appearing on the most recent tax bill, and the amount of assessed value of all real property located within the commonwealth, in which a direct or indirect financial interest was held, which has an assessed value greater than one thousand dollars; and, if the property was transferred during the year, the name and address of the person furnishing consideration to the reporting person or receiving it from him in respect to such transfer;

(7) the name and address of the source, and the fair market value, of any honoraria aggregating more than one hundred dollars if the source of such honoraria is a legislative agent; or if the recipient is a public official and the source of such honoraria is a person

having a direct interest in legislation, legislative action, or a matter before a governmental body; or if the recipient is a public employee and the source of such honoraria is a person having a direct interest in a matter before the governmental body by which the recipient is employed;

(8) the name and address of any creditor who has forgiven an indebtedness of over one thousand dollars, and the amount forgiven; provided, however, that no such information need be reported if the creditor is a relative within the third degree of consanguinity or affinity of the reporting person, or the spouse of such a relative;

(9) the name and address of any business from which the reporting person is taking a leave of absence;

(10) the identity of any equity in a business with which the reporting person is associated which has been transferred to a member of the reporting person's immediate family; provided, however, that a member of the reporting person's family need not report any such transfer to the reporting person.

Nothing in this section shall be construed to require the disclosure of information which is privileged by law.

Failure of a reporting person to file a statement of financial interests within ten days after receiving notice as provided in clause (*f*) of section 3 of this chapter, or the filing of an incomplete statement of financial interests after receipt of such a notice, is a violation of this chapter and the commission may initiate appropriate proceedings pursuant to the provisions of section 4 of this chapter.

Added by St.1978, c. 210, § 20.

§ 6. Gifts from legislative agents

Gifts from legislative agents.

No legislative agent shall knowingly and wilfully offer or give to a public official or public employee or a member of such person's immediate family, and no public official or public employee or member of such person's immediate family shall knowingly and wilfully solicit or accept from any legislative agent, gifts with an aggregate value of one hundred dollars or more in a calendar year.

Added by St.1978, c. 210, § 20.

§ 7. Penalties for violation of confidentiality and for perjury

Penalties for violation of confidentiality and for perjury.

Any person who violates the confidentiality of a commission inquiry under the provisions of paragraph (*a*) of section 4 of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both.

Any person who wilfully affirms or swears falsely in regard to any material matter before a commission proceeding under paragraph (*c*) of section 4 of this chapter, or who files a false statement of financial interests under section 5 of this chapter shall be punished by a fine of not more than one thousand dollars or by imprisonment in a state prison for not more than two and a half years, or both.

Added by St.1978, c. 210, § 20.

CHAPTER 270

CRIMES AGAINST PUBLIC HEALTH

Sec.
1. Adulterating liquor; sale; forfeiture.
1A. Sale of eyeglasses or sunglasses; specifications; exception; flammable frames.
2 to 2B. Repealed.
3. Distribution of drugs or other substance injurious to users.
3A. Placing poison for rodents where it may cause injury; enforcement officers.
4. Food, drink or drug containing wood alcohol.
5. Giving, selling or delivering alcoholic beverages or drugs to hospital patients; possession.
6. Selling or giving tobacco in any form to minors; copy of statute prepared and delivered to towns.
7. Posting copy of section six; removing copy.
8. Selling candy containing alcohol.
8A. Foods containing foreign injury causing substances; distribution or sale.
9. Feeding garbage or refuse; possession.
10. Toys or confectionery containing or coated with material containing arsenic.
11. Samples for analysis for arsenic.
12. Fabric or paper containing arsenic; investigations; inspectors; chemists; regulations.
13. Refusal or neglect to furnish water.
14. Spitting.
15. Arrest without warrant for spitting.
16. Disposal of rubbish, etc., on or near highways and coastal or inland waters; penalties; applicability to dumping grounds; enforcement.
16A. Alternative noncriminal disposition of violations of section 16: Notice to appear before clerk of district court; payment of fine.
17. Disposal of garbage or refuse in containers placed along highways.
17A. Repealed.
18. Substance having property of releasing toxic vapors; sale, possession and use.

Sec.
19. Sale of glue or cement to minors; smelling deterrent ingredients; register.
20. Burning of refuse, etc. within marine or shoreline boundaries.
21. Smoking in certain public places restricted; posting.

§ 1. Adulterating liquor; sale; forfeiture

Whoever, for the purpose of sale, adulterates any liquor used or intended for drink with Indian cockle, vitriol, grains of paradise, opium, alum, cochineal, capsicum, copperas, laurel water, logwood, Brazil wood, sugar of lead or any other substance poisonous or injurious to health, and whoever knowingly sells any such liquor so adulterated, shall be punished by imprisonment in the state prison for not more than three years; and the articles so adulterated shall be forfeited.

§ 1A. Sale of eyeglasses or sunglasses; specifications; exception; flammable frames

No person shall distribute, sell or deliver any eyeglasses or sunglasses unless said eyeglasses or sunglasses are fitted with plastic lenses, laminated lenses, heat-treated glass lenses or lenses made impact-resistant by other methods. The provisions of this paragraph shall not apply if a physician or optometrist, having found that such lenses will not fulfill the visual requirements of a particular patient, directs in writing the use of other lenses and gives written notification thereof to the patient. Before they are mounted in frames, all impact-resistant eyeglass and sunglass lenses shall be capable of withstanding an impact test of a steel ball five-eighths of an inch in diameter weighing approximately fifty-six hundredths of an ounce dropped from a height of fifty inches. Raised ledge multi-focal lenses shall be capable of withstanding said impact test but need not be tested beyond initial design testing. All prescription glass lenses shall withstand said impact test. To demonstrate that all nonprescription glass lenses, plastic lenses and laminated lenses are capable of withstanding said impact test, the manufacturer of such lenses shall subject to said impact test a statistically significant sampling of lenses from each production batch, and the lenses so tested shall be representative of the finished forms as worn by the wearer. Plastic prescription and plastic nonprescription lenses, tested on the basis of statistical significance, may be tested in uncut finished or semifinished form at the point of original manufacture.

No person shall distribute, sell, exchange or deliver or have in his possession with intent to distribute, sell, exchange or deliver any eyeglass or sunglass frame containing any form of cellulose nitrate or other highly flammable material.

Whoever violates any provision of this section shall be punished by a fine of not more than five hundred dollars for each violation.

Added by St.1970, c. 471, § 1. Amended by St.1973, c. 598; St.1979, c. 381.

§§ 2 to 2B. Repealed by St.1960, c. 727, § 1

§ 3. Distribution of drugs or other substance injurious to users

Whoever distributes, delivers or gives away in any public way or from house to house or place to place, any bottle, box, envelope or package containing any liquid, medicine, pill, powder, tablet or other article composed of any drug, poison or other ingredient or substance which may be in any way injurious or harmful to any person who may taste, eat, drink or otherwise use the same, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

§ 3A. Placing poison for rodents where it may cause injury; enforcement officers

Whoever negligently or maliciously places any poison or poisoned food for the control of rats, mice or other rodents in any place where it may cause injury to any human being or domestic animal shall be punished by a fine of twenty-five dollars. The officers charged with the enforcement of the laws relating to fish, birds and mammals under chapter one hundred and thirty-one shall take cognizance of violations of this section and enforce the provisions thereof, and they shall have all powers necessary therefor.

Added by St.1951, c. 444.

§ 4. Food, drink or drug containing wood alcohol

Whoever, himself, or by his servant or agent, or as the servant or agent of another, sells or exchanges, or has in his possession with intent to sell or exchange, or knowingly delivers or has in his possession with intent to deliver, any article of food or drink, or any drug intended for internal use, containing any wood alcohol, otherwise known as methyl alcohol, either crude or refined, under or by whatever name or trade mark the same may be called or known, shall be punished by a fine of not more than five thousand dollars or by imprisonment in a jail or house of correction for not more than two and one half years or in the state prison for not more than five years, or by both such fine and imprisonment.

§ 5. Giving, selling or delivering alcoholic beverages or drugs to hospital patients; possession

Whoever, except under the direction of a physician, gives, sells or delivers alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, or a narcotic drug to a patient in any hospital who is suffering from inebriety or from the effect of inebriety, or from excessive use of narcotic drugs or from the effect of such use, and whoever has in his possession within the precincts of any hospital any such beverage or drug with intent to convey or deliver it to any such patient, except under direction as aforesaid, shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than two months.

Amended by St.1934, c. 328, § 27.

§ 6. Selling or giving tobacco in any form to minors; copy of statute prepared and delivered to towns

Whoever sells a cigarette to a person under eighteen, or whoever sells snuff or tobacco in any of its forms to any person under sixteen, or, not being his parent or guardian, gives a cigarette to a person under eighteen, or gives snuff or tobacco in any of its forms to any person under sixteen, shall be punished by a fine of not more than fifty dollars. A copy of this section printed in letters not less in size than eighteen point capitals, boldface, shall be prepared by the department of public health and delivered without charge to towns applying therefor.

§ 7. Posting copy of section six; removing copy

A copy of the preceding section printed as therein specified shall be posted conspicuously by the owner or person in charge thereof in the shop or other place used to sell cigarettes at retail, and whoever violates this provision shall be punished by a fine of not more than fifty dollars. Any person unlawfully removing a copy so posted while said premises are used for the sale of cigarettes shall be punished by a fine of ten dollars.

§ 8. Selling candy containing alcohol

Whoever sells to a person any candy enclosing or containing liquid or syrup having more than one per cent of alcohol shall be punished by a fine of not more than one hundred dollars.

§ 8A. Foods containing foreign injury causing substances; distribution or sale

Whoever sells, gives, or distributes to anyone candy or other food or foodstuffs containing a foreign substance, which is intended or may reasonably be expected to cause injury to a person eating the same, shall be punished by imprisonment in the state prison for not more than five years.

Added by St.1977, c. 861.

§ 9. Feeding garbage or refuse; possession

Whoever knowingly feeds or has in his possession with intent to feed to a milch cow any garbage, refuse or offal collected by a town, or by any person having authority therefrom, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than two months; and whoever knowingly feeds or has in his possession with intent to feed to any food animal, except swine, any garbage, refuse or offal collected by a city of more than thirty thousand inhabitants shall be punished by a fine of not more than fifty dollars or by imprisonment for not more than one month.

§ 10. Toys or confectionery containing or coated with material containing arsenic

Whoever, himself, or by his agent or servant, or as the agent or servant of another, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, or exposes or offers for sale or exchange, any toys or confectionery, containing or coated wholly or in part with arsenic, shall be punished by a fine of not less than fifty nor more than one hundred dollars.

§ 11. Samples for analysis for arsenic

Whoever offers or exposes for sale or exchange any paper, fabric or other article shall furnish a sample thereof sufficient to ascertain by analysis the existence of arsenic therein, if such sample can be obtained without damage to the remaining portion, to any inspector, chemist or other agent or officer of the department of public health who applies therefor and tenders the value thereof; and for a violation of this section shall be punished as provided in the preceding section.

§ 12. Fabric or paper containing arsenic; investigations; inspectors; chemists; regulations

Whoever, himself, or by his agent or servant, manufactures, sells or exchanges, or has in his custody or possession with intent to sell or exchange, any woven fabric or paper containing arsenic in any form, or any article of dress or household use composed wholly or in part of such woven fabric or paper, shall be punished by a fine of not less than fifty nor more than two hundred dollars; but this section shall not apply to articles intended for the destruction of insects, having the word "POISON" plainly printed in uncondensed gothic letters not less than one inch long on both sides of each sheet and square foot of the fabric, or to dress goods or articles of dress containing not more than one one-hundredth grain, or to other materials or articles containing not more than one tenth grain of arsenic for each square yard of the material. The department of public health shall make all necessary investigations as to the existence of arsenic in the aforesaid articles and materials, employ inspectors and chemists, and adopt such measures as are necessary to enforce this section.

§ 13. Refusal or neglect to furnish water

A corporation engaged in selling or distributing water, which refuses or neglects to furnish or supply water to or for any building or premises for the reason that a water bill remains unpaid by a previous owner or occupant of said building or premises shall, unless the person applying for water is in arrears to such corporation for water previously furnished to or for any building or premises, be punished by a fine of not less than ten nor more than twenty dollars.

§ 14. Spitting

Whoever expectorates or spits upon any public sidewalk, or upon any place used exclusively or principally by pedestrians, or, except in receptacles provided for the purpose, in or upon any part of any city or town hall, any court house or court room, any public library or museum, any church or theatre, any lecture or music hall, any mill or factory, any hall of any tenement building occupied by five or more families, any school building, any ferry boat or steamboat, any railroad car or elevated railroad car, except a smoking car, any street railway car, any railroad or railway station or waiting room, or on any track, platform or sidewalk connected therewith, and included within the limits thereof, shall be punished by a fine of not more than twenty dollars.

§ 15. Arrest without warrant for spitting

Any person detected in the act of violating the preceding section may, if his name is unknown to the officer, be arrested without a warrant by any officer authorized to serve criminal process in the place where the offence is committed and kept in custody until he can be taken before a court having jurisdiction of such offence.

§ 16. Disposal of rubbish, etc., on or near highways and coastal or inland waters; penalties; applicability to dumping grounds; enforcement

Whoever places, throws, deposits, discharges or causes to be placed, thrown, deposited or discharged, any trash, refuse, rubbish, garbage, debris, scrap, waste or any other material of any kind on a public highway or within twenty yards thereof, or on any other public land, or in or upon coastal or inland waters, as defined in section one of chapter one hundred and thirty-one, respectively, or within twenty yards of any such water, or on property of another, shall be punished by a fine of not more than one thousand dollars and not less than two hundred dollars, and the court may require, in addition thereto, that such person remove, at his own expense, such trash, refuse, rubbish, debris or materials. The permission of the owner of such land to place, throw, deposit or discharge such trash, refuse, rubbish, garbage, debris, scrap, waste or any other material of any kind on his land shall constitute a defense in any trial for such offense.

If a motor vehicle is used in committing such an offense, a conviction under this section shall forthwith be reported by the court to the registrar of motor vehicles, and the registrar may suspend the license of the operator of such vehicle for not more than thirty days, and if it appears from the records of the registrar of motor vehicles that the person so convicted is the owner of the motor vehicle so used, the registrar may suspend the certificate of registration of said vehicle for thirty days.

The provisions of this section shall not be applicable to any dumping ground approved under section one hundred and fifty A of chapter one hundred and eleven or by other appropriate public authority.

This section shall be enforced by natural resources officers, by the director of the division of motorboats or his authorized agents, by harbormasters and assistant harbormasters, by members of the state police and inspectors of the registry of motor vehicles and by city, town and metropolitan district commission police officers. A city by majority vote of the city council, with the approval of the mayor, or in a town by a vote of its town meeting may enforce this section by designating its public health agents, health officers and health directors as enforcing officers. In the city of Boston, this section shall also be enforced by the commissioner of health and hospitals, by the commissioner of housing inspection, and by the commissioner of public works, and their respective authorized agents, and in section sixteen A, the commissioner of health and hospitals, the commissioner of housing inspection, and the commissioner of public works shall be deemed to be the commanding officers of their respective authorized agents.

Added by St.1949, c. 416. Amended by St.1967, c. 116; St.1970, c. 134, §§ 1, 2; St.1971, c. 79; St.1972, c. 191; St.1973, c. 835, § 1; St.1974, c. 39; St.1979, c. 103; St.1979, c. 105.

§ 16A. Alternative noncriminal disposition of violations of section 16: Notice to appear before clerk of district court; payment of fine

If any officer empowered to enforce section sixteen takes cognizance of a violation thereof, he may request the offender to state his name and address. Whoever, upon such request, refuses to state his name and address, may be arrested without a warrant, or if he states a false name and address or a name and address which is not his name and address in ordinary use, he shall be punished by a fine of not less than twenty nor more than fifty dollars. Such officer may, as an alternative to instituting criminal proceedings, forthwith give to the offender a written notice to appear before the clerk of the district court having jurisdiction at any time during office hours, not later than twenty-one days after the date of such violation. Such notice shall be made in triplicate, and shall contain the name and address of the offender and, if served with notice in hand at the time of such violation, the number of his license, if any, to operate motor vehicles; the registration number of the vehicle or motor boat involved, if any; the time and place of the violation; the specific offense charged; and the time and place for his required appearance. Such notice shall be signed by the officer, and shall be signed by the offender whenever practicable in acknowledgement that the notice has been received. The officer shall if possible deliver to the offender at the time and place of the violation a copy of said notice. Whenever it is not possible to deliver a copy of said notice to the offender at the time and place of the violation, said copy shall be mailed or delivered by the officer, or by his commanding officer or any person authorized by said commanding officer, to the offender's last known address, or in the case of a violation involving a motor vehicle or motor boat registered under the laws of this commonwealth, within five days of the offence, or in the case of any motor vehicle or motor boat registered under the laws of another state or country, within ten days thereof, exclusive, in either case, of Sundays and holidays, to the address of the registrant of the motor vehicle or motor boat involved, as appearing, in the case of a motor vehicle registered under the laws of this commonwealth, in the records of the registry of motor vehicles or the division of motor boats or, in the case of a motor vehicle or motor boat registered under the laws of another state or country in the records of the official in such state or country having charge of the registration of such motor vehicle or motor boat. Such notice mailed, by the officer, his commanding officer, or the person so authorized to the last address of said registrant as appearing as aforesaid, shall be deemed a sufficient notice, and a certificate of the officer or person so mailing such notice that it has been mailed in accordance with this section shall be deemed prima facie evidence thereof and shall be admissible in any court of the commonwealth as to the facts contained therein. At or before the completion of each tour of duty the officer shall give to his commanding officer those copies of each notice of such a violation he has taken cognizance of during such tour which have not already been delivered or mailed by him as aforesaid. Said commanding officer shall retain and safely preserve one of such copies and shall, at a time not later than the next court day after said delivery or mailing, deliver another of such copies to the clerk of the court before whom the offender has been notified to appear. The clerk of each district court shall maintain a separate docket of all such notices to appear.

Any person notified to appear before the clerk of a district court as hereinbefore provided may appear before such clerk and confess the offense charged, either personally or through an agent duly authorized in writing, or by mailing to such clerk, with the notice, the sum provided herein, such payment to be made only by postal note, money order or check. If it is the first, second or third offense subject to this section committed by such person within the jurisdiction of the court in the calendar year, payment to such clerk of the sum of twenty dollars shall operate as a final disposition of the case; if it is the fourth or subsequent such offense so committed in such calendar year, payment to such clerk of the sum of one hundred dollars shall operate as a final disposition of the case. Proceedings under this paragraph shall not be deemed criminal; and no person notified to appear before the clerk of a district court as provided herein shall be required to report to any probation officer, and no record of the case shall be entered in the probation records.

If any person notified to appear before the clerk of the district court fails to appear and pay the fine provided hereunder or, having appeared, desires not to avail himself of the procedure hereinbefore provided for the noncriminal disposition of the case, the clerk shall, as soon as may be, notify the officer concerned, who shall forthwith make a complaint and follow the procedure established for criminal cases, and shall notify, if a motor vehicle is involved, the registrar of motor vehicles, or, if a motor boat is involved, the division of motor boats. If any person fails to appear in accordance with the summons issued upon such complaint the clerk shall send such person by certified mail, return receipt requested, a notice that the complaint is pending and that if the person fails to appear within twenty-one days from the sending of such notice a warrant for his arrest will be issued. If any person fails to appear within twenty-one days from the sending of such notice, the court shall issue a warrant for his arrest.

The notice to appear, provided herein, shall be printed in such form as the administrative justice for the district court department and the administrative justice for the Boston municipal court department may prescribe for their respective departments; provided, however, that a notice prepared pursuant to section twenty A or section twenty C of chapter ninety may be so revised or adapted that said notice may also be used for the notice provided for in this section.

Added by St.1971, c. 358. Amended by St.1973, c. 1107; St.1978, c. 478, § 279.

§ 17. Disposal of garbage or refuse in containers placed along highways

Whoever disposes of household or commercial garbage or refuse by placing it in a trash barrel placed on a public highway by the commonwealth, or by any political subdivision thereof for the convenience of the traveling public shall be punished by a fine of not less than fifty dollars.

Added by St.1962, c. 367. Amended by St.1963, c. 144.

§ 17A. Repealed by St.1979, c. 704, § 3

§ 18. Substance having property of releasing toxic vapors; sale, possession and use

No person shall intentionally smell or inhale the fumes of any substance having the property of releasing toxic vapors, for the purpose of causing a condition of intoxication, euphoria, excitement, exhilaration, stupefaction, or dulled senses or nervous system, nor possess, buy or sell any such substance for the purpose of violating or aiding another to violate this section.

This section shall not apply to the inhalation of anesthesia for medical or dental purposes.

Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

Any person who is discovered by a police officer or special police officer in the act of violating this section may be arrested without a warrant by such police officer or special police officer, and held in custody, in jail, or otherwise, until a complaint is made against him for such offense which complaint shall be made as soon as practicable and in any case within twenty-four hours, Sundays and legal holidays excepted.

Added by St.1966, c. 318.

§ 19. Sale of glue or cement to minors; smelling deterrent ingredients; register

Any person who sells glue or cement to a minor shall require such minor to properly identify himself and write his name and address legibly in a permanently bound register. The seller shall keep such register available for police inspection for a period of six months after the last sale is recorded therein. No such glue or cement shall be sold to a minor unless it contains allyl isothiocyanate (oil of mustard) or some other equally effective and safe deterrent against smelling or inhaling the fumes of such glue or cement.

As used in this section, "glue" or "cement" shall mean any glue or cement that contains a solvent or chemical having the property of releasing toxic vapors.

Whoever violates the provisions of this section shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than six months, or both.

Added by St.1967, c. 154. Amended by St.1970, c. 533, § 1.

§ 20. Burning of refuse, etc. within marine or shoreline boundaries

No person shall burn refuse, rubbish or demolition debris within the marine boundaries of the commonwealth, or within twelve miles from the shoreline of the commonwealth, whichever is the shorter distance. Whoever violates any provision of this section shall be punished by a fine of not less than two hundred and fifty dollars nor more than one thousand dollars.

Added by St.1971, c. 304.

§ 21. Smoking in certain public places restricted; posting

No person shall smoke or have in his possession any lighted cigar, cigarette or other tobacco product in a public elevator, supermarket or single vehicle mass transit conveyance operated by the Massachusetts Bay Transportation Authority, other than personal offices. Smoking of any tobacco product or having in one's possession any lighted cigar, cigarette or other tobacco product shall be restricted to specifically designated areas only, if any, in museums, libraries, hospitals, nursing homes, trains, airplanes and other mass transit conveyances. The owner, manager, or other person in charge of said facilities, buildings, or vehicles shall post conspicuously an appropriate number of signs indicating those areas in which smoking or the possession of lighted cigarettes, cigars or other tobacco products is prohibited.

Any agency or agent of the commonwealth or any of its political subdivisions, who, upon inspection of any such facilities, building, or vehicles for purposes of enforcing any other state or local rule, ordinance or regulation, finds that an appropriate number of signs are not so posted, shall enforce said posting requirement.

Added by St.1975, c. 465.

CHAPTER 271

CRIMES AGAINST PUBLIC POLICY

Sec.
44. Settlement, release or statement by person in hospital; admissibility; reference to at trial; validity.

§ 44. Settlement, release or statement by person in hospital; admissibility; reference to at trial; validity

Except as provided below, no settlement or general release or statement in writing signed by any person confined in a hospital or sanitarium as a patient with reference to any personal injuries for which said person is confined in said hospital or sanitarium shall be admissible in evidence, used or referred to in any manner at the trial of any action to recover damages for personal injuries or consequential damages, so called, resulting therefrom, which statement, settlement or general release was obtained within fifteen days after the injuries were sustained and such settlement or release shall be null and void unless at least five days prior to the obtaining or procuring of such general release or statement such injured party had signified in writing his willingness that such general release or statement be given. This section shall not apply to statements or releases obtained by police officers or inspectors of motor vehicles in the performance of their duty, members of the family of such person or by or on behalf of his attorney. The provisions of this section shall not apply to chapter one hundred and fifty-two.

Added by St.1950, c. 166, § 1.

CHAPTER 272

CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD ORDER

Sec.
19. Procuring miscarriage.
20. Advertising relative to miscarriage or prevention of pregnancy.
21. Instruments or other articles for self-abuse, prevention of conception or abortion, in general.
21A. Furnishing drugs, articles or information for prevention of pregnancy or conception.
21B. Privately controlled hospital or health facility not required to perform abortion or sterilization procedures, or to furnish contraceptive devices or information or family planning services.
22. Concealment of death of illegitimate child.
23. Joinder of charges of murder and offence under section 22.
43A. Smoking in public conveyances and transportation facilities.

Sec.
70. Taking dead body on process or execution.
71. Disinterring bodies.
72. Buying, selling or possessing dead bodies.
76. Ways, railroads, canals or public easements through burial grounds.
77. Cruelty to animals.
80D. Sale, etc. of living rabbits, baby chickens, ducklings or other fowl.
86. Stabling horses or mules on second or higher floors, in places other than cities.
86A. Stabling horses and mules above first floor or exceeding six in cities; use of exits.
86B. Stabling horses or mules exceeding fifteen.
86C. Smoking in buildings used for stabling horses or mules.
86D. Pails of water and sand in buildings used for stables.
86E. Entry upon premises to enforce sections 86A to 86D; ordering conditions remedied; service.
86F. Punishment for violation of sections 86 to 86D or for neglect to comply with orders under section 86E.
96. False notice of birth, marriage or death.
98A. Accommodations and privileges of blind or deaf or hearing handicapped persons with a dog guide; charges or fares.

§ 19. Procuring miscarriage

Whoever, with intent to procure the miscarriage of a woman, unlawfully administers to her, or advises or prescribes for her, or causes any poison, drug, medicine or other noxious thing to be taken by her or, with the like intent, unlawfully uses any instrument or other means whatever, or, with like intent, aids or assists therein, shall, if she dies in consequence thereof, be punished by imprisonment in the state prison for not less than five nor more than twenty years; and, if she does not die in consequence thereof, by imprisonment in the state prison for not more than seven years and by a fine of not more than two thousand dollars.

§ 20. Advertising relative to miscarriage or prevention of pregnancy

Except as provided in section twenty-one A, whoever knowingly advertises, prints, publishes, distributes or circulates, or knowingly causes to be advertised, printed, published, distributed or circulated, any pamphlet, printed paper, book, newspaper, notice, advertisement or reference containing words or language giving or conveying any notice, hint or reference to any person, or to the name of any person, real or fictitious, from whom, or to any place, house, shop or office where any poison, drug, mixture, preparation, medicine or noxious thing, or any instrument or means whatever, or any advice, direction, information or knowledge may be obtained for the purpose of causing or procuring the miscarriage of a woman pregnant with child or of preventing, or which is represented as intended to prevent, pregnancy shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than one thousand dollars.

Amended by St.1966, c. 265, § 2.

§ 21. Instruments or other articles for self-abuse, prevention of conception or abortion, in general

Except as provided in section twenty-one A, whoever sells, lends, gives away, exhibits or offers to sell, lend or give away an instrument or other article intended to be used for self-abuse, or any drug, medicine, instrument or article whatever for the prevention of conception or for causing unlawful abortion, or advertises the same, or writes, prints, or causes to be written or printed a card, circular, book, pamphlet, advertisement or notice of any kind stating when, where, how, of whom or by what means such article can be purchased or obtained, or manufactures or makes any such article shall be punished by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years or by a fine of not less than one hundred nor more than one thousand dollars.

Amended by St.1966, c. 265, § 3.

§ 21A. Furnishing drugs, articles or information for prevention of pregnancy or conception

A registered physician may administer to or prescribe for any married person drugs or articles intended for the prevention of pregnancy or conception. A registered pharmacist actually engaged in the business of pharmacy may furnish such drugs or articles to any married person presenting a prescription from a registered physician.

A public health agency, a registered nurse, or a maternity health clinic operated by or in an accredited hospital may furnish information to any married person as to where professional advice regarding such drugs or articles may be lawfully obtained.

This section shall not be construed as affecting the provisions of sections twenty and twenty-one relative to prohibition of advertising of drugs or articles intended for the prevention of pregnancy or conception; nor shall this section be construed so as to permit the sale or dispensing of such drugs or articles by means of any vending machine or similar device.

Added by St.1966, c. 265, § 1.

§ 21B. Privately controlled hospital or health facility not required to perform abortion or sterilization procedures, or to furnish contraceptive devices or information or family planning services

No privately controlled hospital or other health facility shall be required to admit any patient for the purpose of performing an abortion, performing any sterilization procedure, or receiving contraceptive devices or information.

No privately controlled hospital or other privately controlled health facility shall be required to permit any patient to have an abortion, or any sterilization procedure performed in said hospital or other health facility, or to furnish contraceptive devices or information to such patient, nor shall such a hospital or other health facility be required to furnish any family planning services within or through said hospital or other health facility or to make referrals to any other hospital or health facility for such services when said services or referrals are contrary to the religious or moral principles of said hospital or said health facilities as expressed in its charter, by-laws or code of ethics, or vote of its governing body.

Any such hospital or other health facility exercising the rights granted in this section shall not on account of the exercise thereof, be disciplined or discriminated against in any manner or suffer any adverse determination by any person, firm, corporation, or other entity, including but in no way limited to any political subdivision, board, commission, department, authority, or agency of the commonwealth.

Added by St.1973, c. 521, § 2.

§ 22. Concealment of death of illegitimate child

A parent who conceals the death of the issue of such parent, which if born alive would be illegitimate, so that it cannot be ascertained whether it was born alive or, if born alive, whether it was murdered, shall be punished by a fine of not more than one hundred dollars or by imprisonment for not more than one year.

Amended by St.1977, c. 848, § 1.

§ 23. Joinder of charges of murder and offence under section 22

A parent indicted for murder of the infant illegitimate child of such parent may also be charged in the same indictment with the crime described in the preceding section, and if acquitted of murder, such parent may be convicted of the concealment.

Amended by St.1977, c. 848, § 1.

§ 43A. Smoking in public conveyances and transportation facilities

Whoever, in or upon a railroad carriage, steamboat or other public conveyance, or in a terminal or other facility of the Massachusetts Bay Transportation Authority, after being requested by the person in charge of such conveyance or premises not to do so, or by an operator, guard or other employee of the corporation or authority operating the railroad, steamboat or public conveyance, smokes, or carries an open flame or lighted match, cigar, cigarette or pipe, when a sign prohibiting such smoking is displayed therein, shall be punished by imprisonment for not more than ten days or by a fine of not more than fifty dollars or both.

Added by St.1947, c. 358. Amended by St.1968, c. 310.

§ 70. Taking dead body on process or execution

A sheriff, deputy sheriff or constable who takes the body of a deceased person on mesne process or execution shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than six months.

§ 71. Disinterring bodies

Whoever, not being lawfully authorized by the proper authorities, wilfully digs up, disinters, removes or conveys away a human body, or the remains thereof, or knowingly aids in such disinterment, removal or conveying away, and whoever is accessory thereto either before or after the fact, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two and one half years or by a fine of not more than two thousand dollars.

§ 72. Buying, selling or possessing dead bodies

Whoever buys or sells, or has in his possession for the purpose of buying, selling or trafficking in, the dead body of a human being shall be punished by a fine of not less than fifty nor more than one thousand dollars or by imprisonment for not less than three months nor more than two and one half years.

Amended by St.1974, c. 170.

§ 76. Ways, railroads, canals or public easements through burial grounds

Whoever lays out, opens, or makes a highway or town way, or constructs a railroad or canal, or any other thing in the nature of a public easement, over, through, in or upon any part of an enclosure, which is the property of a city, town, parish, religious society or of private proprietors and is used or appropriated for the burial of the dead, unless authority for that purpose is specially granted by law, or unless the consent of such city, town, parish, religious society or proprietors, respectively, is first obtained, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year.

§ 77. Cruelty to animals

Whoever overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly beats, mutilates or kills an animal, or causes or procures an animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly beaten, mutilated or killed; and whoever uses, in a cruel or inhuman manner in a race, game, or contest, or in training therefor, as lure or bait a live animal, except an animal if used as lure or bait in fishing; and whoever, having the charge or custody of an animal, either as owner or otherwise, inflicts unnecessary cruelty upon it, or unnecessarily fails to provide it with proper food, drink, shelter, or protection from the weather, and whoever, as owner, possessor, or person having the charge or custody of an animal, cruelly drives or works it when unfit for labor, or willfully abandons it, or carries it or causes it to be carried in or upon a vehicle, or otherwise, in an unnecessarily cruel or inhuman manner or in a way and manner which might endanger the animal carried thereon, or knowingly and willfully authorizes or permits it to be subjected to unnecessary torture, suffering or cruelty of any kind shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than one year, or both.

Amended by St.1968, c. 59; St.1972, c. 46; St.1977, c. 679; St.1977, c. 921, § 2.

§ 80D. Sale, etc. of living rabbits, baby chickens, ducklings or other fowl

No person shall sell, offer for sale, barter or give away as premiums living baby chickens, ducklings or other fowl under two months of age.

No person shall sell, offer for sale, barter, display or give away living rabbits, chickens, ducklings or other fowl which have been dyed, colored or otherwise treated so as to impart to them an artificial color.

Nothing in this section shall be construed to prohibit the sale or display of baby chickens, ducklings or other fowl under two months of age by breeders or stores engaged in the business of selling for purposes of commercial breeding and raising or to prohibit the sale or donation of such chickens, ducklings or fowl to schools for use in classroom instruction.

Whoever violates the provisions of this section shall be punished by a fine of not more than one hundred dollars.

Added by St.1947, c. 168. Amended by St.1973, c. 88.

§ 86. Stabling horses or mules on second or higher floors, in places other than cities

No person shall stable a horse or mule on the second or any higher floor of any building, unless there are two means of exit therefrom, at opposite ends of the building, to the main or street floor, unless such building is equipped with an automatic sprinkler system. This section shall not apply to cities.

§ 86A. Stabling horses and mules above first floor or exceeding six in cities; use of exits

No person shall stable a horse or mule above the first or ground floor of any building not equipped with an automatic sprinkler system, or horses or mules exceeding six in all on the first or ground floor of any building not so equipped, unless there are two unobstructed means of exit from each floor whereon it or they are stabled, as far apart as practicable and so constructed as to grade that the said animal or animals can quickly and safely leave the building in case of fire and approved as to situation, arrangement and utility by the chief of the fire department. The person in charge of horses and mules stabled in any building not equipped with such a system and requiring two exists as aforesaid shall cause each such animal to use each such exit at least once a week. This and the four following sections shall apply only to cities.

§ 86B. Stabling horses or mules exceeding fifteen

No person shall stable horses or mules exceeding fifteen in all at any one time in a building not equipped with an automatic sprinkler system unless a watchman is employed constantly on the premises to guard against fire.

§ 86C. Smoking in buildings used for stabling horses or mules

No person shall have a lighted cigarette, cigar or pipe in his possession in any building in which by the provisions of section eighty-six A two unobstructed means of exit are required or in which by the provisions of section eighty-six B the employment of a watchman is required, except in a room in said building made fire-resisting.

§ 86D. Pails of water and sand in buildings used for stables

On every floor of a building not equipped with an automatic sprinkler system, where horses or mules are stabled, there shall be kept in accessible locations and filled at all times, four pails of water and one pail of sand, for each one thousand square feet of floor space, to be used for no other purpose than extinguishing fires and to be so marked.

§ 86E. Entry upon premises to enforce sections 86A to 86D; ordering conditions remedied; service

The chief of the fire department or any person designated by him may, at all reasonable hours, enter into buildings within their jurisdiction where horses or mules are stabled, or upon premises adjacent thereto, for the purpose of enforcing sections eighty-six A to eighty-six D, inclusive, and if any such official or person so authorized finds the existence of conditions likely to cause a fire in such buildings or on such premises, he shall order such conditions to be remedied. Such order shall be served by delivering the same in hand or by posting the same in a conspicuous place on the building or premises affected thereby.

§ 86F. Punishment for violation of sections 86 to 86D or for neglect to comply with orders under section 86E

Whoever violates any provision of sections eighty-six to eighty-six D, inclusive, shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than one month, or both. Whoever refuses or unreasonably neglects to comply with any order issued under section eighty-six E shall be punished by a fine of not more than ten dollars for each day during which such refusal or neglect continues after service of said order.

§ 96. False notice of birth, marriage or death

Whoever wilfully sends to the publisher of a newspaper for publication a false notice of a birth, marriage or death shall be punished by a fine of not more than one hundred dollars.

§ 98A. Accommodations and privileges of blind or deaf or hearing handicapped persons with a dog guide; charges or fares

Notwithstanding any other provision of law, any blind person or deaf or hearing handicapped person accompanied by a dog guide, shall if such dog is properly and safely muzzled, be entitled to any and all accommodations, advantages, facilities and privileges of all public conveyances, public amusements and places of public accommodation, within the commonwealth, to which persons not accompanied by dogs are entitled, subject only to the conditions and limitations applicable to all persons not accompanied by dogs, and no such blind person or deaf or hearing handicapped person shall be required to pay any charge or fare for or on account of the transportation of any public conveyance of himself and such dog so accompanying him in addition to the charge or fare lawfully chargeable for his own transportation. Whoever deprives any blind person or deaf or hearing handicapped person of any right conferred by this section shall be punished by a fine of not more than three hundred dollars; provided, however, that in the case of a deaf or hearing handicapped person, such person carries and displays upon demand, written evidence that the dog accompanying him is a dog guide.

Added by St.1938, c. 155, § 1. Amended by St.1978, c. 93; St.1978, c. 458, § 2.

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